



THE THIRD SECTOR PILOT COURT

- FINAL REPORT -

April 2004

This publication was made possible through support provided by the U.S. Agency for International Development Romania Mission, under the terms of the Associate Cooperative Agreement No. 186-A-00-03-00103-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Agency for International Development.

PREFACE

In the context of broad justice system and judicial reforms underway in Romania, the Government of Romania and international donors identified the improvement of court administration as a priority item.

A three-year pilot project was set up within the Third Sector First Instance Court in Bucharest, to test the feasibility of a number of initiatives designed to foster the enhancement of court operations.

The project received in-kind support from the Romanian Ministry of Justice and was financed by the United States Agency for International Development (USAID), under the terms of cooperative agreements between ABA/CEELI and USAID (No. 186-A-00-00-00112-00 and No. 186-A-00-03-00103-00).

This Report is designed to be a practical guide for other courts interested in replicating some activities toward improving the management and increasing the quality of justice; it documents project results and accomplishments and provides information to encourage its implementation nationwide.

We would like to acknowledge all those individuals who have made a significant contribution to the success of the project, a success that is reflected in the numerous evaluations conducted through the life of the project:

The Ministry of Justice – Valeriu Stoica, Minister of Justice (1996-2000); Flavius Baias, State Secretary (1996-2000); Ioana Cornescu, Director of the Direction for Programs, Syntheses and Statistics (1998-2001); Mihai Acsinte, General Director (1998-2000) of the General Direction for Organization, Human Resources and Relations with the Public Ministry; Ruxandra Costache, Legal Councilor – the Direction for Programs, Syntheses and Statistics (1999-2000); Mădălina Manolache, Legal Councilor, the Direction for Programs, Syntheses and Statistics; Rodica Mihaela Stănoiu, Minister of Justice (2000-2004); Simona Maya Teodoroiu, State Secretary, Ioan Alexandru, State Secretary (2001-2002); Anca Tamaș, Legal Councilor (Director, beginning with 2003), of the Direction for European and Euroatlantic Integration and Programs; Maria Rusu, Legal Councilor, the Direction for European and Euroatlantic Integration and Programs; and Alina Barbu, Legal Councilor, the Direction for Human Resources, Organization of Courts and Statistics.

Courts – Judges: Luciana Mera, former President of the Third Sector Court; Viviane Tiu, former President of the 6th Sector Court; Iulian Dragomir, former President of the Third Sector Court, Marius Tudose, current President of the Third Sector Court; Rodica Aida Popa, Vice-president of the Bucharest Court of Appeals; Ana Boar, former President of the Timisoara Court of Appeals; Silvia Nebela, current President of the Timisoara Court of Appeals; Laura Andrei, former President of the Fourth Sector Court; Laura Radu, former President of the Fourth Sector Court; Cristiana Crăciunescu, Director

of the Training Center for Court Clerks and other Specialized Supporting Staff; and Anișoara Dragu-Sandu, former Director of the Training Center for Court Clerks and other Specialized Supporting Staff.

The United States Agency for International Development (USAID), which financed the project and monitored its implementation.

The ABA/CEELI Washington Team – David Tolbert, Executive Director (2001 - 2003) and Angela Conway, Regional Director for Romania (2000 - 2003), who have coordinated this project.

The ABA/CEELI Romania Team – Luminița Nicolae, Ann Keith, Irene Baniias, William Heekin, Joanne Darkey and David Pimentel (liaisons and staff attorneys), Violeta Balan (Public Interest Law Initiative (PILI) Fellow), and translators Raluca Ivășcanu and Genoveva Bolea.

We would like to give our special thanks to Judge Marius Tudose for his efforts throughout the course of the project, as President of the Pilot Court during the period when most of the project activities took place, as well as to all the judges and supporting staff of the Third Sector Court.

Madeleine Crohn
Director ABA/CEELI for Romania
April 15, 2004

TABLE OF CONTENTS

Executive Summary.....	1
I. Background.....	3
A. A Brief History.....	3
B. Important Features of the Project.....	4
1. Ministry of Justice Support.....	4
2. Transitory Regulation.....	4
3. Working Groups.....	5
4. Steering Committee.....	5
5. Preparatory Work/Information Gathering.....	7
6. Computerization.....	7
7. Evaluations.....	8
II. The Pilot Program – Components, Results and Analysis.....	10
A. More Transparent and Efficient Processes.....	11
1. Intake.....	11
2. Case assignment – stages 1 and 2.....	15
3. Mini-teams and Mini-archives.....	18
4. Forms.....	19
5. Summons and Subpoenas.....	20
6. Mediation.....	21
B. An Improved Image/Public Perception of the Court.....	22
1. The Courts and the Media.....	22
i. Session with the Media, Court Presidents and Court Spokespersons	22
ii. Public Information Offices	23
2. Community Outreach.....	24
i. Informational Brochures.....	24
ii. Inviting School Children to the Court.....	25
iii. Magistrate’s Day.....	26
III. Conclusion: a Promising Start, an Ongoing Reform.....	28
Appendixes.....	30
A. Orders of the Ministry of Justice on the Composition of the Steering Committee.....	31
B. Order of the Ministry of Justice on the Approval of the Transitory Regulation.....	33
C. Transitory Regulation on the Administrative Organization and Operation of the Third Sector <i>Judecatoria</i> in Bucharest.....	34
D. Results of Two Litigants’ Surveys Performed in 2002.....	39
E. Results of the Preliminary Survey of the Third Sector Court Personnel – May 2003.....	46
F. Results of the Final Survey of the Third Sector Court Personnel – November 2003.....	57
G. Job Description for IT Specialist.....	63

H.	Seminar on the Relationship Between the Courts and the Media – Agenda.....	64
I.	Informational Brochures.....	66
J.	School Day – Press release, Agenda, Evaluation Results.....	79
K.	Magistrate’s Day – Agenda, Press Release.....	85
L.	Recommendations of the Council of Europe in the Field of Efficiency and Fairness of Justice	87

EXECUTIVE SUMMARY

In the late 1990s, several international experts analyzed procedures, operations and courts practices in Romania, and submitted recommendations to help enhance the efficiency, transparency and public image of the courts in Romania. The Government of Romania (GOR) decided to test these ideas through a three-year pilot experiment in the Third Sector *Judecatoria* (first instance court) in Bucharest. The U.S. Agency for International Development (USAID) awarded financial support and tasked the ABA/CEELI project in Romania with implementation of the pilot.

This report provides a historical account of the pilot, describes its principal features, analyzes the results, and makes recommendations toward future replication throughout the Romanian judicial system. It also includes a number of documents in the Appendix (“how to”) to assist courts implement some or all of these initiatives. Prior to publication, the report was reviewed by members of the Steering Committee that oversaw pilot project implementation, by ABA/CEELI Romania staff, and by officials at the GOR Ministry of Justice, to ensure accuracy of description and analysis.

The Background Section (I) provides a brief historical context, and highlights a number of “important features” key to the launching of the reform. A first, vital component involves the support of the Romanian Government, the Ministry of Justice, the judiciary and courts’ staff. As is the case for most justice reforms, operational or procedural changes are in conflict with existing norms, and a “transitory” regulation must be adopted to allow for exceptions. The project must be supported and monitored by local leaders – the reason for setting up initially several Working Groups, replaced later on by a Steering Committee. Information is needed to develop the strategy, action plan, timeline and benchmarks of the experiment. Some of the pilot’s features required the introduction of automation. Also, punctual evaluations helped assess needs at the beginning, mid-term and end of the project – to encourage “buy in,” fine-tune the project as it progressed, and assess users’ satisfaction.

The Pilot Program Section (II) details each initiative, specifying its purpose, description and anticipated results.

In order to foster more transparent and efficient processes, the Third Sector Court tested, together with eight other courts and prosecutors’ offices, the application of a new automated registry (ECRIS) financed by the European Union, as well as new systems to assign cases to judges. The Third and Fourth Sector Courts also tested a random case assignment based on alphabetical criteria. By project end, an automated, random case assignment system had been produced by ABA/CEELI, with USAID funding. It will help counter charges that case assignments can be manipulated, and, once the software is fully integrated with ECRIS, streamline the intake procedure – along with improved processing of summons and subpoenas. Other innovations included public posting of court fees schedule, and opening a “payment window” at the court itself – thus saving time for litigants and attorneys. However, other promising ideas could not be implemented fully. For instance, the concept of pairing judges and administrative staff to

follow a case from intake to its final disposition (mini-teams/mini-archives) faced problems of budget (purchase of file cabinets) and space limitations. Court personnel are highly in favor of this idea, and other courts facing lesser constraints may find it of great use. Similarly, relieving judges from administrative tasks – a vital step toward greater efficiencies – will probably take place within broad national reforms, including new laws on the courts, and the necessary, specialized training required by such delegation.

Improving the image of the courts presents a special challenge in Romania. Aside from facing numerous allegations of corruption, courts must contend with an often-hostile press, and have little expertise in public relations. The project sponsored, initially, a session that brought together judges and media representatives; it also proposed to help develop public information offices, staffed with communication professionals. These initiatives could not be pursued at the time. In addition, courts are perceived as intimidating institutions and their operations are obscure for the layperson. In response, the Third Sector court sponsored several community outreach initiatives. Given budgetary constraints, these activities needed to be low cost and easily sustainable by the courts themselves.

The Steering Committee and project staff wrote public information brochures – on such topics as how to file a complaint, pay a summons, and obtain legal representation. After distributing thousands of brochures nationwide, the text was edited, to eliminate technical jargon, and provided to all courts along with a compact disk for easy duplication.

The pilot court also sponsored two events: a “Magistrate’s Day” during which the public was invited to meet with judges; and a “School’s Day,” during which high school students visited court premises, watched some trials, and spoke with court officials. Given the students’ enthusiastic response, the event is now taking place annually and has already been replicated in other courts.

In Conclusion (III), throughout the life of the project, pilot court personnel evidenced a high interest and commitment to the reforms. Initiatives that offered good potential for reducing the perception of corruption – such as the random case assignment system – received some of the best scores. Court automation, mini-teams, and other efficiency-related reforms ranked high, as well. When activities were not developed fully, it was generally for lack of time and resources. In Romania, judges have high caseloads and a ratio of support staff among the lowest in the region. In addition, they must deal with constant changes in legal norms, as the GOR seeks accession to the European Union.

The pilot project is the right stepping-stone for rationalization and reorganization of the judicial system. Much was accomplished in little time. A concerted effort to replicate and expand upon lessons learned to-date should be a national priority, and the Romanian judicial leadership must now take on the many challenges facing its courts.

I. BACKGROUND

A. A BRIEF HISTORY

The concept of testing a number of reforms via a pilot court project is laid out in a report on court administration and organization reform, drafted in 1999 for ABA/CEELI, by U.S. court management experts Markus B. Zimmer and Robert D. St. Vrain.¹ This report was preceded by other studies also commissioned by ABA/CEELI to assess various aspects of the Romanian courts (in 1993 and 1997 respectively²), and the Zimmer/St. Vrain findings were confirmed in subsequent reports, including those by Judge J. Rich Leonard,³ and by a team sponsored by the Department of Justice.⁴

All of the studies included needs assessments and recommendations that covered a broad range of topics such as overhaul of procedures, revisions to existing laws, rehabilitation of court facilities, introduction of pretrial planning conferences, reduction of administrative burdens on presiding judges, docket-based case management, systematic installation of modern technologies, etc. Together, these many studies laid out nothing less than a profound overhaul of administration in the Romanian courts, helping them to achieve modern court management standards, in an attempt to solve vexing problems faced by the judiciary in Romania.

The concept of a “Model Court Project” evolved as a first step towards such reforms. Zimmer and St. Vrain had noted that, with a few exceptions (for instance, in Timisoara), courts had benefited from hardly any improvements during the 1993-1999 period, in part because there existed “no effective structural mechanism [...] to promote the reforms.” Other donors were involved, for example to equip the courts with modern technologies under the programs of the European Union (EU), but implementation was slow.

Foreign experts and Romanian officials concluded that **visible and concrete** change needed to take place, in a short term, and the U.S. experts outlined an implementation plan.⁵ The pilot was designed to address two complementary goals to improve: a) the efficiency, effectiveness, transparency and accountability of the courts; and b) the image/public perception of the courts.

As an underlying strategy, the plan called for initiatives that could be launched at relatively little, or no cost: this would allow for swift implementation despite the paucity of financial resources available to the Government of Romania (GOR), and promote replication and sustainability.

¹ Markus B. Zimmer & Robert D. St. Vrain, *Administrative and Management Reform in the Romanian Courts*, ABA-CEELI, 1999.

² Kramer 1993; Martin 1997 – ABA/CEELI.

³ Memorandum to the Public Diplomacy Office of the US Embassy – J. Rich Leonard, February 2002.

⁴ Michael L. Bridenback, Michael W. Dobbins, Elizabeth A. Jenkins, Rebecca R. Pallmeyer, *Report on Progress and Recommendations for Reform in the Courts of Romania*, May 2002.

⁵ The report includes a number of other system-wide recommendations (Chapter IV) that exceed the scope of the pilot project.

The Ministry of Justice (MoJ) agreed that ABA/CEELI would help implement the project. USAID approved the proposed plan developed in 1999, and began to provide financial support that year. At that time, the Ministry of Justice designated the Sixth Sector *Judecatoria* (first instance court) for the pilot, but due to space related problems, the project was moved to the Third Sector *Judecatoria* (first instance court), already a pilot for two PHARE projects of the European Union.

B. IMPORTANT FEATURES OF THE PROJECT

In order for the “pilot project” to begin operations, a number of events had to take place first.

1. Ministry of Justice Support

Given the Ministry of Justice oversight of courts and their administration in Romania, support from the MoJ was key to the success of the program. On November 1, 1999, the former Minister of Justice approved the establishment of working groups and the appointment of a steering committee. Later on, the MoJ responded to a number of requests, in particular providing key MoJ staff as members of the steering committee (Appendix A), drafting a transitory regulation (Appendixes B and C) to permit implementation of some pilot project features, approving the creation of an IT position at the pilot court and seventeen (17)⁶ new clerk positions, and approving the selection of a contractor to develop random case assignment software.

MoJ support will remain a *sine qua non* component of programs for court administration reform in Romania until such time when new laws might transfer some of these responsibilities to judicial organs. On the other hand, such support did not always lead to the anticipated outcome: only nine (9) of the expected seventeen (17) new clerks slots were funded; and five clerks (2 of the new staff and 3 experienced clerks) were “taken” by the Tribunal in Bucharest. As discussed in the next section, this seriously undercut the pilot’s ability to function as originally intended. For courts interested in undertaking replication of features of the pilot experiment, contingency plans are needed for a smooth implementation.

2. “Transitory Regulation”

In order to achieve the reforms contemplated in the Third Sector Court, the Pilot required a “transitory regulation” approved by the Ministry of Justice, authorizing departures from and exceptions to the generally applicable regulations. These regulations had an impact on procedures to be followed by the Clerk’s office, responsibilities of administrative personnel, handling of court documents (electronic and hard copies), assignment of cases, etc. The transitory regulation (MoJ Order No.268/C - see Appendix B) was approved and

⁶ This increased total staffing at the court from 25 clerks to 34 serving 40 judges – a ratio, even then, much lower than that found in most court systems.

signed by the Ministry of Justice on February 15, 2002, clearing the way for the Pilot project to begin.

It is likely that some, if not all, of these transitory provisions will become part of new laws governing the judicial branch. Nonetheless, pilot reforms generally call for temporary, exceptional changes to the existing rules. Since court improvements tend to be an ongoing process when the culture of reform becomes routine, additional transitory regulations will be needed and should be part of the plan of action.

3. Working Groups

At project inception (1999), the MoJ appointed seven working groups,⁷ charged with exploring the feasibility and design to implement various aspects of the Zimmer/St. Vrain recommendations. Their existence was relatively brief. Some groups mapped out a set of proposed activities, or made worthwhile recommendations – such as the need to create a Training Center for Court Clerks and providing training that would enable court personnel to relieve an overburdened judiciary from purely administrative tasks. However, as a whole, the working group mechanism proved to be somewhat onerous: many members were unable to attend meetings regularly, due to heavy schedules and, while useful as a first step, these specialized group activities were taken over by a Steering Committee.

4. Steering Committee

On the other hand, the steering committee performed an essential role in helping move along the pilot and providing substantive input to its design. It met on a monthly basis starting in July 2001 and, beginning in March 2002, ABA/CEELI kept regular minutes of the meetings. There was some turn-over in committee membership; and some of its members who live in remote locations (*e.g.* Ms. Tătărușanu in Iași, and Ms. Nebela in Timișoara), were unable to attend the regular meetings, but were provided regularly with the agendas and minutes to keep them posted on the activity of the Pilot.

Consistent with the Zimmer/St. Vrain's recommendations, the number of Steering Committee members never exceeded a maximum of twelve (12), in order to be effective.⁸ Their mission was:

- To sponsor this model court project;
- To ensure that the project is launched and that it remains on track as the various stages are undertaken;
- To determine which of the recommendations should be given priority in scheduling and, where required, in funding;

⁷ They were to address these topics: Professional Conduct; Preparing for Computerization; Improving the Public Image of the Courts; Reforming Filing Fees; Review Function and Purpose of Court Forms; Review/Reform Ways of Scheduling Hearings, Conferences and Trials; Reviewing Delegation of Court Presidents' Functions.

⁸ Early on, upon recommendation of the Steering Committee, the MoJ agreed to increase the number from 9 to 11, to increase regional participation that would, in turn, facilitate replication of the pilot.

- To bring the plan to completion; and
- To set into motion the process for implementing the successful elements of this plan in other courts.

For the most part, the Steering Committee fulfilled its mission: it was active, committed to the pilot, and ensured its timely implementation. Although ABA/CEELI – as “implementer” – provided for coordination, scheduling and documentation (minutes and reports), several Steering Committee members helped draft or contributed to these tasks.

Members of the steering committee of the Third Sector Pilot Court project hold the institutional and technical memory of the reform, and constitute the best source of information and technical assistance to other courts interested in replication. As envisioned initially by Zimmer/St. Vrain, the members would form a core group of “change agents” and help facilitate reforms nationwide. Realistically, though, they are unlikely to have the time to be available routinely and advise others. This raises an important question that should be addressed by the Romanian justice system leadership: if reforms are to be expanded upon, the availability of a **core group** of Romanian officials familiar with the reform is an important ingredient to sustainability. Further, such core group members would need sufficient “free time” to fulfill this role. Future action plans should take these factors into consideration.

Membership of the steering committee included the following:

Marius Tudose, Court President, Third Sector *Judecatoria*
 Rodica Aida Popa, Vice-President, Bucharest Court of Appeals
 Laura Andrei, former Court President, Fourth Sector *Judecatoria*
 Silvia Nebela, President, Timișoara Court of Appeals
 Laura Radu, new Court President, Fourth Sector *Judecatoria*
 Doinița Tătărușanu, Court President, Iași *Judecatoria*
 Cristiana Craciunescu, Director, Training Center for Court Clerks (succeeding the previous TCC Director, Anișoara Sandu Dragu)
 Anca Tămaș, Ministry of Justice
 Radu Brăteni, Ministry of Justice
 Alina Barbu, Ministry of Justice
 Carmen Bârsan, Ministry of Justice

As replication of the pilot project reforms, or introduction of new ones, are contemplated by other courts, they should seriously consider the creation of local steering groups, perhaps with a smaller membership. Input from those who will be responsible for implementing the reform is essential to the design of the new project; and their continued involvement helps build ownership of the reform, and provide practical information so that the action plan is a realistic one. In the absence of an “implementer” – such as ABA/CEELI – the steering committee should appoint a “task manager” from within its rank, to coordinate schedules, agenda, minutes, and monitor follow up. Given the heavy demands on the schedules of judges and administrative staff, such task manager is key if the

project is to remain on track. The task manager should also have sufficient status/seniority to be able to exercise the necessary leadership.

5. Preparatory Work / Information Gathering

In designing the pilot project, ABA/CEELI conducted surveys of court users (litigants and attorneys) at the Third Sector Court to determine what their complaints were and which issues might be ripe for reform under the pilot project. The information was then extracted to identify the greatest needs to be addressed – from the perspective of the public.

These surveys were taken on March 6, 2002, and again on March 25, 2002. Two surveys were conducted because the first one raised concerns about its accuracy or candor: members of the public were required to hand out their questionnaires to court staff and as a result the response might have been skewed. The second survey allowed respondents to deposit the forms, anonymously, in a box (see questionnaire and results at Appendix D). Interestingly, even though the two groups of respondents included for the most part different individuals, the responses were quite similar. In both groups, the majority ranked highly the professionalism, interpersonal skills and impartiality/honesty of judges and administrative staff of the Third Sector court. Where frustration existed, it had to deal principally with case delay, cost and inconvenience of paying court fees, or availability of legal counsel. Among those measures that would help improve productivity, the surveys listed setting up an information office at the court, setting up an office at the court to collect fees, and computerizing all court services.

Such gathering of information, upfront, meets two related objectives: it helps bring to the attention of court officials the perspective of court users – a viewpoint which is not necessarily known to the court; and it represents a first “outreach” to the community, informing parties and attorneys that the judicial system wishes to be responsive to its concerns.

6. Computerization

In order for the Pilot project to be operational, computerization of the Third Sector court was indispensable. Expectations were that the EU PHARE project (under which the Third Sector court was one of the selected sites) would provide computers to help implement the pilot, but delays in the PHARE program prompted ABA/CEELI to step in and donate computers, printers, server and basic software, and internet access, while the U.S. Embassy provided cabling in the building. The hardware, including servers, printers, and twenty high performance computers, compatible with the technical specifications of the PHARE 1997 Program, arrived at the court in early 2003, and systems were installed shortly thereafter.

In anticipation of the arrival of computers, ABA/CEELI arranged for and supported basic computer training for judges and court staff at the National Institute for Magistrates (NIM), in June and September 2002, for a total of twenty staff members. The court

president assigned trainees to different groups depending upon their familiarity with computer technology (beginners, advanced), and according to their principal activities.

Finally, ABA/CEELI recruited and sponsored the services of an Information Technology (IT) expert, who installed the workstations per instructions of the court president, designed and configured the Local Area Network (LAN), configured the systems (domain, users, domain policy), installed operating systems and back ups, and connected the system to the case management software (ECRIS) being developed under one of the PHARE programs (see Appendix G). Over a nine month period, the IT expert trained court staff in how to use the ECRIS software, monitored the LAN, and provided, on-site, ongoing technical assistance to court staff (“help desk”).

7. Evaluations

Two sets of questionnaires were distributed to all judges and court personnel involved in the pilot (for a total of twenty-two persons).

The first questionnaire was distributed and compiled in May 2003. Responses helped understand overall opinions about the various project components, assess preliminary results, and fine-tune or modify some of the activities – particularly in the areas of public information (brochures) and computer assisted case assignment (see questionnaire and compilation of results at Appendix E).

The second questionnaire had a slightly different purpose. Distributed and compiled toward project end (November 2003), it asked court staff – both judges and administrative personnel – to reflect upon the project, and rank – from most to least useful – project achievements in relation to its goals (improve efficiency, transparency and the image of the court), as well as assess missed opportunities and recommend additional innovations (see questionnaire and compilation of results at Appendix F). They ranked these initiatives highly: opening of a payment center for fees on court premises, the use of mini-teams⁹ and the posting of fee schedules; and, to a lesser extent, public outreach such as the availability of public information (brochures) and School’s Day. While they continue to rank highly random case assignment, they unfortunately could not comment on the “blind” system developed and installed in 2003: actual use of the system had been tolled until 2004, when passage of the new law on judicial organization was anticipated, including provisions for blind assignment, nationwide.

The second questionnaire also provides useful insights for future initiatives: respondents overwhelmingly endorse the use of non-adjudicative dispute resolution – probably to relieve crowded caseloads; an increased use of mini-teams – noting that this would require additional administrative staff; and delegation of intake tasks to administrative staff. Finally, they make a number of recommendations on how to increase efficiency and transparency of the courts.

Finally, in Spring 2003, ABA/CEELI and the Steering Committee agreed upon a set of

⁹ Mini-teams: they consist of one judge/court staff per team, who follows a case from filing to disposition.

questions to measure, for example, numbers of cases filed and disposed of, to compare over six months periods, data in 2002 and 2003, factoring in the number of active judges. This research project was not feasible, despite several gallant attempts: data retrieval from manual ledgers was too burdensome for an over-extended staff, the use of summer law school interns did not work out and, finally, during late fall 2003, the Third Sector Court had to relocate its offices and court rooms, a fact that affected even more the staff's workload.

II. THE PILOT PROGRAM: COMPONENTS, RESULTS, AND ANALYSIS

The program was purposefully action-oriented, designed to make court operations more transparent and efficient and to improve the image of the courts. It did not operate in a vacuum. For instance, the Third Sector pilot court project (also referred to as Third Sector court, or Pilot project) was also one of the sites for the EU PHARE computerization project. In view of delays in the EU project, and since this pilot was dependent in part on information technologies, some of the program components dealt with computerization to supplement PHARE initiatives where needed (see Computerization, *supra* page 11). Further, several initiatives under the pilot directly relate to Council of Europe Recommendations to Prevent and Reduce the Excessive Workload in the Courts [No. R (86) 12], concerning the design and re-design of court systems and legal information systems in a cost-effective manner [Rec (2001)2], and on the delivery of court and other legal services to the citizen through the use of new technologies [Rec. (2001)3], (see Appendix L), or topics currently under consideration (such as early settlement of disputes).

A DECADE OF RECOMMENDATIONS BY U.S. EXPERTS – 1993-2002: SOME EXAMPLES

- Create Romanian leadership group(s) to oversee reforms and pilot efforts
- Increase the authority of judges to expedite case processing
- Create processes for mediation or settlement of cases
- Adopt measures that ease the judicial burden of preparing for hearings
- Reduce the administrative burdens on presiding judges – create position of professional court administrator(s) and provide necessary training; decentralize budget authority and assign court personnel to handle day-to-day accounting duties
- Delegate administrative functions to the appropriate level(s) including those of case assignment, registry functions, documentation, and non-judging tasks
- Simplify the system of case registries
- Convert to a more functional case filing and organization system
- Develop new sources for funding the acquisition of automated equipment, i.e. increase filing fees
- Increase the level of sanctions against litigants or attorneys for misbehavior in court
- Prepare courts for computerization (minimum standards, national guidelines, training of judges and court personnel, IT support functions)
- Convert to a case docket system, and eliminate duplicative/unnecessary procedures
- Rationalize court forms (purpose and function)
- Develop an automated case management system
- Create an automated, random case assignment system
- Develop a court web site with information on services, hearing dates, etc.
- Improve the image/public perception of the courts (create public and media relations group; create/distribute public information brochures; improve proactively relations with the media; develop court newsletter and community outreach programs; post customer- friendly signage)
- Engage in long term planning for better facilities
- Establish an executive council of court presidents
- Establish an office of court technology

Broader, systemic reforms including some of Zimmer/St. Vrain’s recommendations, went beyond the scope and capacity of the pilot project, such as imposing additional court fees to help support court automation, imposing judicial sanctions on attorneys for misconduct, creating an integrated case management system, or establishing an executive council of court presidents. Also, some of the shorter-term initiatives could not be implemented fully for a variety of practical reasons.

This section discusses what was done and, when constraints developed, what they were and what might be done in the future.

A. MORE TRANSPARENT AND EFFICIENT PROCESSES

The project was designed to introduce improvements to the existing processes and procedures, from intake – when a case is filed – to assignment of the case to a judge, through its final disposition. Some of the actions taken were designed to make the court more “user friendly” as well as re-assure citizens that the judicial assignment process could not be manipulated.

1. Intake

Background and explanation:

During the intake process, parties have their first contact with the court, and thus develop their first impression about the judicial system. When the intake process is efficient and transparent, the image of the court improves accordingly.

Typically, in Romania, presidents of all courts rotate the “intake responsibility” to judges who conduct mostly administrative tasks, such as review filings, check that fees have been paid, and determine whether the case is being filed in the appropriate court. Efficiency gains accrue when such tasks are handled by administrative personnel – with a judge available for the resolution of more complex issues.

Under the Pilot project, the following initiatives took place, some leading to significant improvements, others to mixed results.

- i. Automated registry: the case management software (ECRIS) financed by the European Union, produces an electronic as well as written registry through a daily print out. In principle, this procedure not only saves staff time, it also increases accuracy, helps avoid the loss of documents, facilitates the generation of statistics and reports, and permits easier data retrieval. Clerks and administrative personnel could handle most of the data entry and relieve judges from a non-adjudicatory task.

By January 2003, intake of new cases at the Third Sector court was fully

automated through the use of the ECRIS software, and court personnel report that time is saved for both litigants and court personnel through the availability of a computerized system. The Steering Committee was greatly interested in delegating the responsibilities of the intake judge to competent staff members in the registry office. At the request of several courts, the Training Center for Court Clerks had submitted a proposal to the Ministry of Justice, recommending a number of areas where judges should be permitted to delegate duties to the staff members. The MoJ was unable to respond to this request, at the time, but plans may be underway to revisit the issue within the context of new laws and the likely restructuring of court operations.

Unfortunately, the reform has not yet gone as far as it was originally intended:

- a) Judges – not administrative personnel – continue to process the intake. Delegating the intake process would constitute a novelty in most civil law judicial systems and many judges/courts (in Romania and elsewhere) are resistant to the notion. Interestingly, a number of judges in the Third Sector Court appear to favor this innovation, as long as proper training of administrative staff precedes this delegation (Appendix F).
 - b) The courts (including the Pilot at the Third Sector, as well as other courts who have introduced the automated intake process) maintain the old, handwritten registry as well – a redundancy which cancels out efficiency gains obtained through automation. Even though the transitory regulation allows for electronic and hard copy of the registry (the latter, as a computer print out), the print outs do not have the dimension stipulated in the court by-laws, and judicial personnel fear that inspectors would find fault with them if the traditional registry were not filled out.
- ii. Fee schedule: Fees must be paid by the parties at intake, and their amount varies depending upon the type of case and value. Prior to the Pilot program, claimants would ask this information from the judge in charge of intake, or stop judges in the hallway requesting this information – a chaotic practice that used up valuable judicial time, and was not particularly helpful to the public. In November 2002, the Third Sector Court obtained a bulletin board (with a glass front) from the Tribunal and posted the official fee schedule, copied directly from the law itself, but blown up for easy reading. While the document is somewhat long and complicated, it permits litigants to calculate the fee. Court personnel report that the posting saves judges’ and litigants’ time – even if some litigants continue to request the information from the judges.
 - iii. Payment window at the courthouse: Perhaps one of the most immediate improvements, from the litigants’ perspective, is the availability of a payment center on the court premises, beginning September 2002. As noted by one

respondent to the March 2003 questionnaire (Appendix E): "... time, money and nerves are saved." Before the existence of the pilot, it was not possible to pay court fees at the courthouse itself. Parties wishing to file a case had to go to a savings bank ("CEC") at a different location, pay the necessary fees (stamp), and then return to the court with a receipt showing that the fees had been paid. Unless they knew in advance the amount of the fee required, this involved a circuitous path (1) to the courthouse, (2) to the bank, and (3) back to the courthouse.

The creation of this payment center at the court required considerable negotiation between the MoJ and the Ministry of Public Finances as well as between the management of the Bucharest Tribunal and the administration of CEC, with the court agreeing to provide the necessary space, and CEC accepting to open a payment window in the court building itself. Since this one-stop process began, usage has been heavy. One full-time employee works the window and appears to be busy all day with a steady stream of customers. No money is kept overnight at the court, but according to the Court President, the CEC window there received eight billion lei (nearly a quarter of a million dollars) during the first four months of operations.

Court personnel estimate that timesavings to litigants could range from an hour to a full day. With this precedent, negotiations with savings bank(s) around the country should be facilitated, and there is no reason – other than severe space restrictions – why the same initiative cannot be replicated nationwide.

- iv. Signage: In 2002, the Third Sector court installed signs to orient the public and make the court more accessible to newcomers. Initially, the plan was to post map(s) of the building, label the location of various offices, and have a "You are Here" notation. This could not be achieved: building blueprints could not be found and the cost of developing a map of the building was deemed prohibitive. Throughout the building, rudimentary, hand-made signs were taped to the wall in plastic sleeves on the doors of offices and courtrooms. They were often taken down, however, whether this was a result of an accident or purposeful vandalism. Providing signage became a moot issue, since the Third pilot court had to reconfigure its space allocation when the Tribunal took over, permanently or at least for the long term, part of the pilot court office space.

Conclusions and recommendations:

In combination, these new procedures and operations during the intake phase represent a significant improvement from the litigants' perspective. Pilot court personnel also report satisfaction with these innovations. Most of them can be easily replicated in other courts, since they can be introduced at little or no cost (fee schedule and payment window). For example, the payment window has proven to be a complete success. The concept has potential for implementation in virtually all courts throughout the country. While space in courthouses may often be at a premium, it is difficult to imagine a use of space that would have higher impact for the public served by the court. The Ministry of Justice

should be encouraged to begin negotiations with CEC to open such payment windows in all courthouses. Courthouse design and renovation projects should anticipate the existence of a payment window, and provide for it.

On the other hand, efficiency gains anticipated through computerizing the intake process, and delegating the task to administrative personnel have been somewhat disappointing. The observations that follow address the shortfalls of reforms undertaken by the pilot project, due to lack of clarification by higher authorities. They also speak to broader administrative reforms anticipated through the nationwide installation of automated case management, and the drafting of new laws.

1. The registry/record keeping redundancy should be cleared up, probably through a letter from the Ministry of Justice, and communicated to its inspector generals. This would help reduce court personnel's fear of being penalized when inspections take place.
2. The notion of delegating non-adjudication duties from judges to administrative personnel still meets with reluctance and it is unlikely to become routine in the short term, despite its potential for reducing considerably time spent by judges on administrative matters. "Court management" is a new concept in civil law countries and, even though new legislation in Romania may call for the creation of court manager positions, such a change requires careful monitoring over a significant period of time. In the United States for example, despite its tradition of judicial independence, the re-assignment of administrative duties from judges to non-judicial administrators, which began in the 1950s, took several decades before taking hold and being accepted by the bench. The re-assignment of intake duties to administrative staff, envisioned by the expert consultants has not developed fully yet. It is anticipated that new laws on organization of the judiciary will include the position of some form of court administrator. The role of the Ministry of Justice or the Supreme Council of Magistrates, or both, will be of great importance in clarifying the responsibilities of this new position, alleviating judges' concerns, providing the required training, and redesigning the organizational charts/timelines of responsibilities, this for starters.
3. Introduction of new technologies must be planned rigorously: during the transition time (moving from a manual to an automated system), the workload will be **greater**, for a period that may last from a few weeks to a few months. In addition, even though repetitious tasks will be eliminated eventually, and productivity enhanced, the actual workload will not be reduced: automated management information system will generate, for example, new requests for information, tabulations and statistics/analyses that could not be performed under a manual system.
4. The IT consultant position at the Third pilot court, sponsored with ABA/CEELI support, was eliminated at the time of project wrap up (December 2003) and a new IT professional was hired by the court to occupy this position. All courts will

need to have these services available, preferably on-site, particularly when the automated case management system is fully operational. The MoJ has announced that, in order to recruit and retain qualified personnel, it would upgrade the position to the level of Chief Clerk. Nonetheless, the justice system in Romania will face the same dilemma as all other countries that have automated Management Information Systems (MIS): in view of the competition of the private sector, with considerably higher wages, skilled personnel are difficult to find, let alone retain over the long term. Some countries have adopted various types of incentives to pre-empt turnover. These approaches, however, may not be suitable to the Romanian context.

5. The posting of fee schedule has had its ups and down since it was first installed in 2002. Often, the document had to compete for bulletin-board space with other announcements considered “essential.” Perhaps a board should be dedicated for that single purpose and be located near the payment center. Similarly, signage should be encouraged: it fosters the image of a transparent and accessible court, informs the public, helps negotiate the intimidating environment of the court, and saves court staff time and trouble. Some courts have been able to install clear, permanent signage, and the practice should be encouraged to improve the courts’ image (user friendly).

2. Case Assignment – stages 1 and 2

Background and explanation:

A number of important decisions are made during the early phases of a new court case, including the decision of case assignment (*e.g.* which judge will be assigned to handle the case). Aside from questions of efficiency, this decision, how it is made and by whom, can undermine the reputation of courts if suspicions exist about the impartiality of the decision, and perceptions that the assignment can be manipulated.

Under the prevailing law and regulations governing courts in Romania, the assignment of cases is handled at the discretion of the court president. Most court presidents make such case assignments *ad hoc*. It is believed that many court presidents do this in a sincere effort to equalize the workload among judges, but the discretion to make case assignments gives the court president power that can be abused easily.

Given this general perception, adoption of an objective “blind” case-assignment system is of critical importance in addressing corruption, and the perception of corruption, in the judiciary. Consistent with this, objective case assignment became a high priority for the Third Sector Pilot. This occurred in two phases:

- i. Alphabetical system: Following a model developed by the Court of Appeals in Timișoara (which, in turn, was based on an approach used in Bremen, Germany), the Third Sector Court began on March 18, 2002 to follow a system of assigning cases on an alphabetical basis. The Fourth Sector court adopted a similar system

in January 2003. The names of the parties (plaintiffs in civil cases, defendants in criminal cases) are used as a key for the assignment of cases. A particular judge or panel will be assigned to take all of the cases whose party names start, for example, with A, G, and V. The system is not truly random, but it is completely transparent. Any tampering with the case assignment system, to direct a particular case to a particular judge, would be immediately apparent.

While a step in the right direction, the alpha system had its drawbacks:

- a) *Overhead required to develop and maintain the assignment system.* Before the system can be adopted, someone must survey the case filings of the previous year (or more) to ascertain how many cases come under each letter of the alphabet to distribute cases evenly among judges, and such monitoring must be ongoing.
- b) *Potential for subjectivity in the alphabetical assignment.* There remains a possibility, albeit a more limited one, for the court president to ensure that all cases involving a certain defendant will be assigned to a particular judge.
- c) *Individual litigants will always get the same judge.* For instance, under the alphabetical plan, a civil plaintiff or a criminal defendant will always go before the same judge or panel. Because losing parties often suspect the judge of bias, this pattern can undermine confidence in the courts. Individual litigants who have lost a case before one judge will feel it is unfair that they are stuck with that judge in perpetuity.¹⁰
- d) *The system does not save time for the court president or court staff.*

In the survey conducted in March 2003, Third Sector court judges and court personnel praised the introduction of this new case assignment system (“...avoiding any suspicion is welcome, due to the general atmosphere, and the stringent need to build public respect and confidence in justice”). But several noted then, as well as in November 2003, that this system did not take sufficiently into account the volume of cases assigned to judges or panels, and led to some disproportionate caseloads. All respondents were, on the other hand, unanimously in favor of a random computer assisted assignment system (blind). ABA/CEELI, with approval from the MoJ and USAID, decided to sponsor the creation of a blind assignment software that can be used in all courts of Romania, regardless of their level.

- ii. Computer assisted random assignment: Put simply, each new case – once the data is entered in the automated register – is assigned to a judge picked at random by the computer system. The software includes computations designed to avoid overloading any judge with too many cases or too many complex ones. The system allows for changes, following computer-aided assignments, but access is

¹⁰ The Fourth Sector, in replicating the Third Sector’s reform here, chose to rotate the alphabetical assignments from judge to judge, effectively avoiding that problem.

restricted, and security features are built in: the software tracks by whom, when, and for what purpose any change was made, in keeping with the goal of transparency. A number of additional safeguards are part of the design to protect its integrity.

Following a request for bids, ABA/CEELI selected with approval of the steering committee and support from USAID a Romanian firm (Softwin) that created the new software. Their assignment was guided in part by a working group – appointed with approval from the MoJ - and was completed over a five-month period including:

- a) *Review of procedures that court presidents must follow in assigning cases (first instance courts, tribunals, courts of appeal)*
- b) *Development of specifications which were verified by the working group*
- c) *Testing, debugging, and installation in eight courts*
- d) *Training of court personnel assigned to this function.*

Software was installed successfully, and training took place in eight courts – seven in Bucharest, including the Third Sector court, and one in Pitesti. One court only (Pitesti) has actually used the software, and reports that it functions well and is easy to use. Its leadership expressed concerns that this was not a **totally** blind system, since changes could be introduced manually. This, along with other features of the system will need to be reviewed in policy and technical terms when the system is installed nationwide.

In the Bucharest courts, leadership at the Court of Appeals and Tribunal asked the lower courts to freeze implementation until the new law on the judiciary, which provides for a random case assignment, comes into force. As a result, in their response to the final questionnaire (Appendix F), Pilot project personnel could not comment – for lack of experience – on the new system; it is noteworthy that they continue to express high expectations about a truly random system, and some frustrations with the alpha-based assignment.

Conclusions and recommendations:

The technical challenges for this particular initiative were straightforward: need to select a quality firm that is familiar with the desired outcome, and can deliver on time and according to specifications; and, from the very beginning, rigorous involvement of the end-users to help formulate terms and processes, and verify accuracy. The project was helped also by the support of the IT and International Programs divisions of the MoJ, who helped ensure that the Softwin product was compatible with the ECRIS case management system, and that there would be no duplications of data entry. Further, the MoJ conducted a review and compared the merits of the Softwin and Piatra-Neamt systems when one court in Falticeni (jurisdiction of the Suceava Court of Appeals) reported that it already had developed and implemented a random case assignment

system through the software developed by Piatra-Neamt. A month later, the MoJ issued a report comparing the merits of the two systems, and selecting the Softwin system – developed under this project – as the superior product for future installation nationwide. In February 2004, USAID and ABA/CEELI transferred the software to the GOR, entitling it through a Memorandum of Understanding to full access and use of the product.

In terms of timelines and rollout, there were delays. An unexpected side effect is that the training provided to court personnel in September 2003 on how to monitor the software and enter data may be forgotten by the time the system is in use. However, one can understand the cautious approach of the Bucharest judicial leadership: it was reluctant, for fear of negative repercussions, to give the go-ahead to initiatives until the most formal approvals from the executive branch have been issued. This overly guarded attitude is not singular to Romania, nor is it a recent phenomenon. Rather, it speaks to the specific types of constraints that confront justice and judicial reforms in civil law countries, the delays that are likely to affect implementation, some of the ambiguities in lines of hierarchies, and the need – for donors and implementers alike – to factor in such delays in work plans and timelines.

Nonetheless, the diligent work of all involved in this project component represents a major step forward in efficiency and transparency. It is likely that implementation nationwide, when it takes place, will have the support (“buy in”) of most judges and court personnel, if their sentiments echo those of end-users at the Third Sector court. As noted in the March and November 2003 evaluations, they expressed enthusiasm and eagerness for the product to be available.

3. Mini-teams and Mini-archives

Background and explanation:

This initiative was designed to address problems with cases “slipping through the cracks, “by appointing a “team” of judges and court staff who would follow the case from beginning to end, *e.g.* “a judge and court clerk would work on a case from the first procedure document until the case resolution, to increase responsibility in preparing procedural documents and adopting decisions” (Judge Marius Tudose). This step was specifically authorized under the terms of the Transitory Regulation. Coupled with the mini-team concept was the idea of “mini-archives,” *e.g.* to keep the case-files assigned to the mini-team in a dedicated space co-located with the staff member’s (or judge’s) working area. This would assure that the case-files were close at hand and that open cases would remain conspicuously visible to those responsible for them until they were resolved.

This initiative was well received by judges and court personnel, various attempts were made to implement the concept and, in the March 2003 evaluation, most respondents were favorable to the idea. The Third Sector President reported in 2002 that this had helped increase the number of available panels from 30 to 35, largely due to an increase

in administrative staff. Although the Ministry provided nine extra staff to the Third Sector court, five staff positions were taken away from the Third Sector by the Tribunal resulting in an insufficient number of administrative staff to establish the mini-teams. Staff was spread too thin, and the problem was exacerbated by periodic employee absences.¹¹ The Third Sector court tried to implement the concept as well as it could, but certain staff members had to be assigned to more than one team, working with more than one judge each. The acquisition of thirty metal, locking cabinets needed to reorganize files never materialized, in part because there was no place to put them all. Toward the end of the Pilot project, the problem was exacerbated when part of the Bucharest Tribunal moved into the already over-taxed space occupied by the Third Sector court.

Conclusions and recommendations:

The notion of structuring the handling of cases from beginning to end by the same judge/panel and staff, and making files readily available to such team is a staple of good court administration. In addition to efficiency gains, this procedure reduces the likelihood of “losing” files – a step toward reducing public perception that cases are being manipulated. Again, this novel approach received the full support of the Third Sector court personnel, who expressed disappointment that the experiment fell short for lack of space and personnel.

It is regrettable that this initiative could not be tested fully. As is often the case in pilots and reforms, best efforts can be thwarted in the presence of competing interests (the Tribunal taking over staff as well as space). In order to meet international standards promoting good court management, the Romanian justice system should be encouraged to pursue and fully implement this concept, in the context of Romanian norms and procedures.

4. Forms

Background and explanation:

In all reports by experts, recommendations include the rationalization of forms, the creation and use of face sheets to ease data retrieval, and the creation of electronic templates. In particular, a case cover sheet, patterned on the “data entry” page of the EU-designed registry software, could be of enormous value to court staff in cataloguing and registering new causes of action. The data entry for each new case would include certain essential fields; and having the filing party fill out such a sheet and submit it with the initial case filing could ensure that everyone filing a case has compiled and provided all the necessary information. Registry office staff will be troubled by fewer “incomplete” filings and, if the form is developed correctly, the plaintiff will have to articulate the nature and basis for his/her claim with greater specificity.

¹¹ Many of the clerks are students whose academic pursuits require occasional absences, for example, during exams.

Conclusions and recommendations:

Neither the initial working groups, nor the Steering committee, addressed these recommendations. There was an attempt, separate from the Pilot project, to review/revise forms, and a committee was constituted but did not find the time to meet. One single new form was developed by the Steering Committee and it is currently in use. The face sheet idea did not attract much interest within the Steering Committee; further the Committee did not believe that it could create or revise forms without explicit authority from the Ministry of Justice. Further, Third Sector court personnel appear (per evaluations) to be divided on the usefulness of the face sheet initiative.

As a result, it is not possible at this time to determine the extent to which documents/forms and their flow should be improved. In the future, this probably should take place in the context of revised by-laws flowing from new judicial organization laws. Where possible, these by-laws should allow for some flexibility, permitting courts to test and innovate in areas of day-to-day procedures.

5. Summons and Subpoenas

Background and explanation:

After the introduction of ECRIS at the Third Sector court, some efficiencies have accrued through computer printouts of subpoenas and summons. On the other hand, all commentators point to the ineffectiveness and costs of processing subpoenas through the mail. Plaintiffs file suit and it is the court's responsibility to serve the defendants. Most of it is done by mail, which is expensive in Romania. Moreover, many times on the day of the hearing, the defendants are not there, due to failure of service.

Thirty-forty years ago, summonses were served by court staff, *e.g.* agents employed by the court to serve court papers (currently, the Third Sector court employs only two such agents, whose work is limited to service in "urgent procedure" cases). Each Sector was divided into sections with the court staff becoming thoroughly familiar with the streets and geography of their particular sections. Or, as another alternative, a delivery service would be paid only for the deliveries that are actually successful. This would give the server an incentive to find a way to effect service, and reduce the likelihood that the process server (now a mail carrier) would simply give up on delivering the notice anytime he or she encounters difficulty.

Conclusions and recommendations:

Romania is hardly the only country facing serious problems with the timeliness and efficiency of serving summons and subpoenas. Large expenditures are made in the relatively ineffective method of service by mail, and money currently spent on postage could be re-directed into personnel budgets. This is, however, a nationwide problem – probably best dealt with by either the Ministry of Justice or the Superior Council of Magistrates – and those affiliated with the pilot court were reluctant to take initiative on

their own. Pilot court personnel showed relatively low interest in this area.

The potential for cost savings is real however. The efficacy of the service process would also gain in transparency, and a more effective method could serve purposes of deterrence.

6. Mediation

Background and explanation:

Given the large increase in the number of civil and commercial cases pending in courts, the Third Sector court leadership and ABA/CEELI floated the notion of introducing a court-annexed mediation pilot as part of the project. The proposal was to focus in particular on commercial and family cases, to include training of volunteer mediators and test, initially, the service for free.¹² However, as reported by Judge Leonard following his 2002 site visit,¹³ the concept of alternative dispute resolution (such as mediation) remains fairly alien to the Romanian legal and social cultures. An attempt in 2000 to introduce a bill on mediation gathered little or no interest among judges or lawyers. As of December 2003, the MoJ was in the process of drafting a new bill in this area.

Conclusions and recommendations:

Mediation, arbitration and other forms of resolving disputes as alternatives to adjudication **can** be useful tools: for some cases, such as family or commercial disputes, an agreement reached by the parties with assistance of a mediator can be more satisfying and long-lasting than a decision by a third party, such as a judge; or, to help relieve backlogs and dispose of reasonably simple cases quickly, other forms of alternative dispute resolution (ADR) can help divert cases from the judicial workload. High expectations – such as dramatic reductions of caseloads or costs savings – are met, however, only when the court has rigorous control over the calendaring and management of cases, and its oversight of various dispute resolution projects is equally rigorous.

Further, many point as Judge Leonard did to “cultural” resistance to alternatives to litigation, such as mediation, or note that by the time a case has reached the courts, negotiations between the parties is quasi-impossible. As a new law is evolving on the topic, it would be useful for the GOR and its experts to review the full panoply of conflict resolution tools – with their distinct processes and outcomes - the possibility of introducing mediation and related options through a mechanism that precedes escalation of the dispute, and enroll if possible the collaboration of the bar. For reference, in countries when “ADR” was introduced some 40 years ago, most lawyers and judges were adamant opponents to the idea. Since then, many lawyers and retired judges have trained

¹² It is worth noting that in prior years, ABA/CEELI had sponsored mediation training to judges in 1999, and to MoJ officials in 2000 and 2001. Since then, aside from initiatives in the private sector, the Public Diplomacy office (U.S. Embassy in Romania) has sponsored a community-based, court-annexed pilot mediation program in Craiova.

¹³ Leonard, *supra* note 3.

in various forms of dispute resolution, and have an active business as mediators, arbitrators, or neutral evaluators.

B. AN IMPROVED IMAGE/ PUBLIC PERCEPTION OF THE COURT

“ ... A variety of judicial system [...] and Ministry of Justice officials expressed concern about the poor image of the judiciary in the mind of the public. This poor image extends both to the judiciary, as an institution charged with dispensing justice in a fair and objective manner, and to judges as important public officials ...” (Zimmer – 1999).

“ ... Every judge to whom we spoke expressed fear and disapproval of press coverage of the courts. They insist that press reports of their activities are uniformly negative and that reporters never interview the lawyer for the winning party in a controversial case, with the result that the press portrays the judicial system as incompetent and corrupt...”(OPDAT – 2002).

At the Pilot court, several community outreach initiatives were launched, most with a great deal of success and resulting in favorable reactions. Some have already been replicated in other courts (particularly providing the general public with simple information (brochures) on how the court functions, and inviting schoolchildren to visit the court and speak with judges). Programs to assist judges and spokespersons deal with the press preceded these initiatives.

1. The Courts and the Media

i. Session with the Media, Court Presidents and Court Spokespersons

Background and explanation:

In order to help educate the press and other media about the court, encourage openness, and assist in accurate reporting about the court, the ABA/CEELI sponsored an event at the National Institute of Magistrates. Invited to participate were presidents of the courts in Bucharest, designated court spokespersons and, for the final session, representatives of the media. The program, held over two days on May 16-17, 2002, was conducted by an expert on media relations, and the spokesperson for the Romanian National Bank also made a presentation. The participants (twelve in all) had the opportunity to learn how to write a press release and give an interview (see Agenda at Appendix H).

Evaluations completed by the participants after the course were very positive. Despite outreach efforts to the media, however, only one journalist attended. He wrote two articles about the event, and although he did not get all the facts quite accurately (the problem persists), he did highlight the lack of adequate resources available to court spokespersons in order for them to fulfill their duties.

Conclusions and recommendations:

This component was tangential to the pilot project and was not pursued. Courts' relations with the media remain poor, however, and much needs to be done in this area: a good relationship between judges and reporters, one rooted in mutual respect and trust, is necessary if judicial reform is to be successful. It is also at the heart of how public opinion is formed on the actual or perceived corruption of the justice system. Ultimately, many of the judicial branch' efforts to increase transparency and accountability will have relatively little impact on public opinion, unless accurate, informed and objective media reporting begins to take place.

Lack of public understanding of how courts (and the justice system) operate is universal. In some countries, however, initiatives have focused on a small, core group of reporters/journalists – interested or specialized in justice matters – to provide them with access, training, and other learning opportunities, this with limited yet notable results in increasing the quality of media coverage of the justice system.

ii. Public Information Offices

Background and explanation:

A new law, known as the Freedom of Information Act (FOIA), Law No. 544/2001, was enacted in November 2001, requiring all public institutions to open offices dedicated to responding to requests for public information. As a rule, the provisions of the law were slow to be implemented, often because of budgetary constraints.

In September 2002, the Pilot Steering Committee asked the Ministry of Justice to approve a couple of extra positions to staff a true public information office in both the Third and Fourth Sectors courts. The hope was to hire experienced public information experts and to expand the courts' public information services to reflect both the needs of the institution and the mandate of the new law. The Ministry of Justice was not able to respond to this request at the time.

As noted earlier, public perception of the judiciary remains an intractable problem. The media are particularly harsh, and they do not appear to show much interest in researching or documenting the facts, or in adhering to journalistic standards. Popular perceptions of corruption in the courts (documented in the World Bank report¹⁴) affect the way people approach the court. If there is a perception that the judges take bribes, for example, it may well become a self-fulfilling prophecy because parties will feel emboldened to offer bribes. An effective public information office, one that offers the public and the media timely, relevant, and accurate information about the court and its processes, could begin a rehabilitation of the judiciary's public image. The principle of openness underlies the current law, too.

¹⁴ "The court system is among the institutions that are perceived by many to have widespread corruption." World Bank: *Diagnostic Surveys of Corruption in Romania*.

Conclusions and recommendations:

While this avenue was not pursued under the pilot project, under a separate project – funded by USAID – ABA/CEELI is working with pilot courts around the country to help set up FOIA offices, as well as assist in judicial interpretation of the Law (No. 544/2001).

2. Community Outreach

i. Informational Brochures

Background and explanation:

Courts tend to be an intimidating environment and, for the ordinary citizen, their operations are obscure. Public confidence in the courts increases when the public gains a better understanding of the courts' role and their procedures. A variety of public information tools have been introduced in several countries ranging from inter-active kiosks or videos shown at the court house to internet sites and web pages that can be consulted on site.

Given the constraints of courts' budget in Romania, and as a low cost, sustainable option, practical pamphlets in lay terms can provide basic information to citizens when they come to court. Under the Pilot project, a first set of brochures was developed with assistance from the Steering Committee and, in March 2002, eight separate orientation brochures¹⁵ were printed for a total of 1,000 for the first printing. At the Third Sector court, the brochures were put in public display racks in the courthouse, where the public could help themselves at the rate of 100 brochures of each type per week. Additional sets of brochures were provided in June 2002 to the Fourth Sector *Judecatoria* (first instance court), and to the *Judecatoria* Ploiești and, in September, to the Iași *Judecatoria*. As was the case in the Third Sector court, brochures disappeared quickly from the display racks suggesting the existence of high public interest. In total, 36,000 sets of brochures were printed and distributed in these courts through early 2003.

Responses by court staff to the March 2003 questionnaire indicated that a simplification of the text was desirable, in order to be more accessible to laypersons. New versions were drafted during the 2003 summer for six of the original eight brochures¹⁶ (see Appendix I). In order to facilitate reproduction at minimal costs, the brochures were saved on CDs which were distributed to all courts of appeal, nationwide, along with instructions on how to print out the documents. In their current formats, the brochures can easily be

¹⁵ 1. Legal terminology; 2. Appeals in civil procedure; 3. Appeals in criminal procedure; 4. How to behave in courts; 5. Filing Complaints; 6. Payment of summons; 7. Competence of the courts; 8. Legal representation in courts.

¹⁶ The topic of "Payment of Summons" was deemed not to be particularly useful; the brochure on "appeals in civil procedure" was not part of this second set, because new legislation had not been adopted at the time.

duplicated in large volumes using a xerox machine.

Third Sector court personnel who responded to the final evaluation were pleased with the rewrite (20 out of 21 respondents).

Conclusions and recommendations:

Orientation guides and brochures fill a critical need to educate the public. Distributing them at the courthouse gets them into the hands of the people who need them most. The MoJ or the Superior Council of Magistrates should be encouraged to consider the distribution of a standard set of informational brochures and self-help guides for use in the courts throughout the country, with periodic and timely updates. Given scarce resources, the use of CDs to print out and duplicate a high volume of brochures helps meet the demand at minimal costs.

ii. Inviting School Children to the Court

Background and explanation:

In an effort to promote understanding of the courts in society, ABA/CEELI and the Third Sector court hosted an educational program for schoolchildren on June 5, 2002, and again on June 5, 2003. During the 2003 visit, the written and TV media were present and press releases were issued. Based on the general success of this first event in June 2002, a second such event took place at the Fourth Sector in February 2003, and one at the Tribunal in Galati, in October 2003.

For each event, high schools were contacted and students were invited to visit the court, along with their teachers (see Appendix J). They were able to sit in on court sessions, tour the courthouse facilities, and have a question/answer session with the court president, judges, and prosecutors who were on the bench that day. During the first event, the students were able to attend a limited number of hearings, only, because they toured the courthouse first. By the time the tour was over, many of the court sessions had ended for the day. The order of the agenda was reversed for subsequent events.

Throughout each visit, students asked candid and thought-provoking questions, demonstrating a keen interest in the justice system. Following each tour, students completed surveys and the feedback was very positive. Some of the students reportedly told their teachers afterwards that they had decided that they wanted to become judges. The judges involved in the program also found it to be a rewarding experience.

Conclusions and recommendations:

This experience appears to have been a complete success. The content of the program is established now, and these kinds of events can be carried out on a regular basis, and at little or no cost, in other courts. The positive experiences of the Third and Fourth Sectors, and that of the Tribunal in Galati, have been documented and information on

how to hold a “School Day at the Court” can be found at Appendix J. The long-term impact can be large, as these students’ perceptions of the court system will be forever altered.

Informing the future generation can be a powerful tool in increasing justice system literacy nationwide. Examples of other activity types include:

1. Sponsoring a “moot” court at a high school, in collaboration with school officials, and with the participation of a local court official(s). Various NGO volunteers can be helpful in organizing the event.
2. Judges or other court personnel participating in a Q&A session at local schools, or following distribution in schools of the orientation brochures explaining how the court functions.
3. Presentations on “how the court works” to university students (such as journalism and business schools), at law schools, and to some NGOs (such as the Center for Independent Journalism).

iii. Magistrate’s Day

Background and explanation:

On July 1, 2002, on the occasion of Magistrate’s Day,¹⁷ the Third Sector court hosted a public event of an informational and educational nature. The purpose was to give the public greater exposure to court processes, to convey an openness about court operations, and to respond to any questions the public may have about this court and the judiciary in general. Advertisement was done by posting a notice in the courthouse, a week before the event, and a press release was issued.

The agenda (see Appendix K) included presentations by members of the Pilot Steering Committee (Third Sector Court President Marius Tudose, Bucharest Court of Appeals Vice-President Rodica Popa, and then-Fourth Sector Court President Laura Andrei). Topics included a summary of the court system history, and descriptions of judicial organization and court procedures. About 15-20 members of the public, including some lawyers and members of the Young Lawyers’ Association of Bucharest, attended the event. Representatives of the press also participated.

According to reports from attendees, while the content of the program was informative, turnout and participation were poor and, as a result, the event failed to achieve much impact. The event was not repeated in 2003.

Conclusions and recommendations:

The notion of “opening the court” to the general public is worthy of further consideration.

¹⁷ A yearly celebration in Romania.

Poor attendance was to be expected due to inadequate publicity, although general lack of interest may also have contributed to the problem. The format, also, may have been too academic and, possibly, intimidating.

Alternatives should be entertained, including:

1. “Evening with a judge” – assigning interested judges on a rotating basis
2. In partnership with other Justice System officials (prosecutors, legal counsels, MoJ representatives) small “roundtables with journalists” drawing on a select group of journalists interested in obtaining more in depth – accurate – information on the justice system.

III. CONCLUSION:

A PROMISING START, AN ONGOING REFORM

“When confronting the impossible, it’s time to take action.”

Jules Verne

Pilot projects have a single, unique purpose: to test new ideas, evaluate their results, and help transfer information toward the replication of successful initiatives. In all institutions, whether related to the justice system or not, reforms are a necessary ongoing process. Otherwise, the institution quickly becomes obsolete, irrelevant, and plagued with problems of credibility.

Initiatives undertaken at the Third Sector Court, as well as those that could not be brought to completion, should be replicated within the context of broad organizational reforms currently underway in Romania. The most important of them include:

- 1) automation of court operations;
- 2) nationwide installation of random case assignment;
- 3) creation of payment centers within each court;
- 4) signage and public displays of fee schedules;
- 5) ongoing updating and distribution of public information brochures;
- 6) further testing of the mini-team/mini-archives concept;
- 7) delegation of administrative duties to administrative personnel;
- 8) piloting diversion of cases to alternate methods of resolving conflicts; and
- 9) expanded public outreach.

Many of them fit within the restructuring anticipated as a result of new laws on judicial reforms. Replication should be for the most part relatively easy, since they can be handled at little or no additional costs.

As aptly noted by Judge Leonard in his 2002 report, however, there will be little progress unless some mechanism exists that drives, monitors and documents initiatives and their replication. This could take the form of a **small** committee of court presidents, representatives of the MoJ and, perhaps, some donors, and should include individuals who have the standing to advise and monitor, as well as the time to campaign for and coordinate the reforms. For local initiatives, the mechanism could take the form of a smaller version of the Steering Committee. One cannot underestimate the importance of such mechanism, generally referred to as “change agents” in the literature of successful reforms. Regardless of the locus of such mechanism or group, it must play an aggressive role – in helping transfer information from one court to the next and monitoring timelines and progress – tempered with flexibility, such as allowing individual courts to experiment when such initiative is in the spirit of upcoming reforms. It must also be pragmatic and

mindful of severe time constraints experienced by judges, at least in some courts, and be a buffer between reform-minded judicial leaders and bureaucratic inertia, defenders of the *status quo*, and those who undermine – for whatever reason – reform efforts.

Finally, this group or groups should stay abreast of, and draw upon lessons learned from similar reform initiatives. Each country is unique, yet all countries face similar challenges in areas of justice reforms regardless of the legal context and culture. An enormous amount of information exists on how to plan for, what problems to anticipate and avoid, and how to implement reforms – from full automation of the courts to organizing a modern administration structure to public outreach including a better-informed media.

The courts in Romania are at a crossroad: plagued with charges of corruption and inefficiencies, they nonetheless are beginning to acquire the tools to deal with these criticisms and there exists a sufficient core of reform-minded judges to help implement a broad reform agenda. As a case in point, the final evaluation by judges and court personnel at the Third Sector court demonstrates an excellent and pragmatic understanding of principal problems, priorities for change, and relationship between goals (transparency, efficiency) and various initiatives. This is all the more remarkable since the questionnaire was filled at a particularly stressful time at the court: aside from increased workloads, due to recent legislation on pretrial detention – something which affected all courts, the Third Sector court lost much of its space so that panels had to take turns, late into the next day, using court room space available.

Even though a compounding difficulty makes progress difficult, *e.g.* constant changes in the legislation, one can expect that as the GOR attempts to meet all aspects of legal standards related to EU accession, the fluidity of the legal and regulatory context will stabilize, and that the new laws will be consistent with a robust reform agenda.

All involved with the Pilot project should be praised for their vision and their hard work. They encountered, at times, difficult situations and, for the most part, sought to resolve them in a timely fashion. It is now up to their peers and other officials to pick up from this promising start and further it nationwide.

An efficient, effective, transparent, and credible judiciary in Romania is a goal within reach. This is the challenge that its leaders now must meet – no more, but no less.

APPENDIXES

APPENDIX A

ORDERS OF THE MINISTER OF JUSTICE ON THE COMPOSITION OF THE STEERING COMMITTEE

MINISTRY OF JUSTICE ORDER No. 1590/C

The Minister of Justice;

Taking into consideration the Project regarding the improvement of court administration, carried out by the Ministry of Justice in cooperation with the American Bar Association, and under which the Third Sector Court was designated as a Pilot Court;

According to the provisions of the Romanian Government Decision no. 212/2001 on the organization and functioning of the Ministry of Justice, as subsequently modified and completed;

Issues the following

ORDER

Art. I – The composition of the Steering Committee shall be established with the purpose to implement the measures proposed by ABA/CEELI at the level of the Third Sector Pilot Court:

- Iulian Dragomir, president of the Third Sector Pilot Court;
- Ana Boar, president of the Timisoara Court of Appeals;
- Rodica Aida Popa, vice-president of the Bucharest Court of Appeals;
- Anisoara Sandu Dragu, director of the School of Clerks;
- Radu Brateni, deputy director of the MOJ Economic, Administrative and Investment Department;
- Anca Tamas, delegated judge, MOJ Programs and Prognoses Department;
- Alina Barbu, legal advisor, MOJ Organization, Human Resources and Judicial Statistics Department;
- Carmen Barsan, legal advisor, MOJ Legislation, Studies and Documentaries Department.

Art II – The Department for Organization, Human Resources and Judicial Statistics shall carry out the application of the provisions of this Order.

Bucharest, July 31, 2001

IOAN ALEXANDRU
SECRETARY OF STATE

Signs
For Rodica Stanoiu, Minister of Justice

THE MINISTRY OF JUSTICE

ORDER NO. 991/C

The Minister of Justice;

Taking into consideration the Project regarding the improvement of court administration, carried out by the Ministry of Justice in cooperation with the American Bar Association, and under which the Third Sector Court was designated as a Pilot Court;

Taking into consideration the fact that, at the present time, some of the group members do no longer hold the position that made them eligible for such appointment, as well as the fact that we intend to expand the implementation of the program at the Fourth Sector Court of Bucharest and the Iasi First Instance Court;

According to the provisions of the Romanian Government Decision no. 212/2001 on the Organization and Functioning of the Ministry of Justice, as subsequently modified and completed;

Issues the following

ORDER

Art. I – Article I of Order No. 1590/C/31.07.2001 of the Minister of Justice shall be amended and completed, and shall read as follows:

“The composition of the Steering Committee shall be established with the purpose to implement the measures proposed by ABA/CEELI at the level of the Third Sector Pilot Court:

- Marius Tudose, president of the Third Sector Court of Bucharest;
- Laura Andrei, president of the Fourth Sector Court of Bucharest;
- Doinita Tătărușanu, president of the Iași First Instance Court;
- Silvia Nebela, president of the Timisoara Court of Appeals;
- Rodica Aida Popa, vice-president of the Bucharest Court of Appeals;
- Anișoara Sandu Dragu, director of the School of Clerks;
- Radu Brăteni, head accountant of the Economic, Investment and Administrative Department of the MOJ;
- Anca Tămaș, legal advisor, MOJ Programs and Prognoses Department;
- Alina Barbu, legal advisor, MOJ Organization, Human Resources and Judicial Statistics - Department;
- Carmen Bârsan, legal advisor, MOJ Legislation, Studies and Documentaries Department.”

Art. II – The Department for Organization, Human Resources and Judicial Statistics shall carry out the application of the provisions of this Order.

Bucharest, July 31, 2001

IOAN ALEXANDRU
SECRETARY OF STATE

Signs
For Rodica Stanoiu, Minister of Justice

APPENDIX B

ORDER OF THE MINISTER OF JUSTICE ON THE APPROVAL OF THE TRANSITORY REGULATION

MINISTRY OF JUSTICE ORDER No. 268/C

The Minister of Justice,

Considering the court administration and management reform program conducted by the American Bar Association through its Central and Eastern European Legal Initiative Program, in which the Third Sector Court has been selected as a pilot court;

Under the provisions of Article 142 of Law No. 92/1992 on Judicial Organization, republished with subsequent modifications and additions;

In compliance with the provisions of the Government Decision no. 212/2001, on the Organization and Operation of the Ministry of Justice, with subsequent modifications and additions;

Issues the following

ORDER

Art. I – The Regulation on the Organization and Administrative Operation of the Third Sector Court, a pilot court within the program proposed by the American Bar Association – the Central and Eastern European Law Initiative, shall be approved.

Art. II – The Department for Organization, Human Resources and Judicial Statistics and the leadership of the Third Sector Court shall enforce the present Order.

Issued in Bucharest, on February 15, 2002

Rodica Mihaela Stănoiu
Minister of Justice

**TRANSITORY REGULATION
ON THE ADMINISTRATIVE ORGANIZATION AND OPERATION
OF THE THIRD SECTOR *JUDECATORIA*
(FIRST INSTANCE COURT) IN BUCHAREST,
THE PILOT COURT WITHIN THE PROGRAM
PROPOSED BY ABA/CEELI**

CHAPTER I

Provisions on the Activity of the Auxiliary Departments of the Court

*Section I
General Provisions*

Art. 1 – The clerk’s office, registration office and archive are performing operations with regard to receiving, registering correspondence, both in a computerized system and on hard copy, posting correspondence, filing documents, record keeping, both in a computerized system and on hard copy, as well as other support activities necessary to the proper administration of the court.

*Section II
Clerk’s Office*

Art. 2 – The Chief Clerk has the following responsibilities in addition to the provisions of the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal:

- a. draws up, both in computerized form and on hard copy, monthly reports on court personnel and on the administration of court assets, securities and goods serving as evidence in pending cases;
- b. proposes to the court president, on an annual basis, the assignment of clerks to court sessions following the continuity principle, so that the same clerk and judge are maintained on the same panel, thus having a mini-team;
- c. updates the daily register for the record of court decisions and keeps the files of decisions both in computerized form and on hard copy;
- d. keeps, both in computerized form and on hard copy, the register for the record of complaints filed against orders for preventive arrest or interdictions to leave the city, injunctions against prolonging the preventive arrest and complaints filed against ordinances rejecting requests for provisional release;
- e. keeps files of court orders issued in cases stipulated by letter d), as well as their computerized record in a database by fully scanning them;
- f. keeps a computerized record, as well as on hard copy, of first appeals (*recurs*) issued in the cases stipulated by letter d), providing for the submission of cases to the court that hears the first appeal (*recurs*) within the terms provided by the law;
- g. keeps, both in computerized form and on hard copy, any other special registers

- provided by the law;
- h. drafts, both in computerized form and on hard copy, judicial statistics, under the guidance and with the support of the judge appointed by the court president;
 - i. keeps, both in computerized form and on hard copy, the register for complaints against acts and measures taken by the prosecutor in the criminal investigation stage.

Art. 3 – A clerk has the following responsibilities in addition to the provisions of the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal:

- a. takes part in the court sessions during the judicial year, together with the same judge, as a mini-team, performing all duties incumbent on him/her according to the law and to the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal as well as to the present Regulation, executing any other task ordered by and under the control of the president of the panel
- b. keeps the record of assigned cases, both in computerized form and on hard copy, until the decision is made;
- c. keeps in a mini-archive, depending on the available space, cases assigned during the year for the same panel.
- d. keeps electronically the registration of incoming and outgoing notices of a file from the mini-archive to the civil/criminal archive;
- e. types court decisions prepared by the judge that have been issued.

Art. 4 – The court session clerk organizes and keeps annually the mini-archive, having the following responsibilities:

- a. receives from the civil/criminal archive of the court the newly registered cases and records them in a separate registration, both in computerized form and on hard copy;
- b. fills in, in a separate record, after each court session, the date of the next hearing when the cases are postponed, or the number and the content of the decision when the cases are decided;
- c. communicates, in computerized form, to the civil/criminal archive the decisions taken by the panel, in order to have them mentioned in the general registers;
- d. sends to the civil/criminal archive the cases requested to be consulted by the interested parties, having them returned to the clerk, for the next hearing and for being kept in the mini-archive;
- e. gives to the civil/criminal archive the decided cases in order to be kept in accordance with its responsibilities provided for under article 7 of the present Regulation.

Art. 5 – The analyst-programmer clerk, an university graduate, has, in addition to the responsibilities provided in the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal, the task to supervise the activity of the library of the court.

Section III
Archive and Registration Office

Art. 6 – The staff assigned to the court registration office has in addition to the provisions of the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal the responsibility to receive and register on the computer and on hard copy the complaints filed with the court and the rest of the correspondence.

Art. 7 – The staff assigned to the court registration office and archive keeps the record, both in computerized form and on hard copy, of the cases and files of decisions, according to the provisions of the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal.

CHAPTER II
Operation of Court’s Administrative-Judicial Activity

Section I
Work Relationships with the Public

Art. 8 –(1) The judge on duty receives complaints and verifies if they meet the requirements provided by law.

(2) if necessary, the plaintiff is asked either to add to or modify the complaint and to submit certified copies of each document they use as evidence for that case.

(3) when the complaint is sent by mail, the above-mentioned shortcomings will be sent in writing to the plaintiff, asking him/her to fill out or modify the complaint by the next hearing.

(4) after stamping the “received” stamp, or, if necessary, after the missing elements are filled out, s/he returns the case file to the registration office to be registered in the general case register in computerized form.

Art. 9– (1) The subsequent requests and documents filed after the initial submission and registration of the case file shall be submitted directly to the registration office.

(2) Failure to register the requests and documents for pending cases, received personally from the litigants or by mail, by the archivist-registrar, is considered a disciplinary misconduct and is punished according to art. 184 of the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal.

Art. 10–(1) Files for pending cases can be viewed by parties, their agents or other persons who prove a legitimate interest, only in the court’s archive. After consultation, the file should be returned to the clerk.

(2) The incoming and outgoing notices of a file shall be made on the computer by

both clerks and the corresponding archive staff.

(3) Files can be consulted only after the clerk has made the notes referring to the sending of the file to archive.

Section II

Activity Prior to a Court Session and Administrative Issues

Art. 11 – The activity prior to a court session and the activity that deals with administrative issues shall be carried out in the registration office, archive and clerk's office, which inputs in the computer data upon the reception of documents or any other requests in connection with a case.

Art. 12 – The court president, after s/he receives a complaint, sets up the hearing and the panel of judgment according to the alphabetical criteria, according to the name of the party.

Art. 13 – (1) In order to assign cases according to the alphabetical criteria, statistics shall be drafted regarding the proportion of letters in the total of cases for a period of three years.

(2) The first letter of the name plaintiff [civil], or of the defendant [criminal], shall be taken into consideration when assigning cases; in case there are several plaintiffs or defendants, the name having the first letter closer to A shall be selected, and the case is assigned to the panel of judgment which is responsible for that letter.

(3) In case the plaintiffs are commercial companies, autonomous regions, local or county councils, schools, hospitals, churches, associations or other legal entities, the name of that legal entity shall be taken into consideration and not the generic name.

(4) The criterion provided by art. 12 shall be also observed for requests of extensions of preventive arrests according to art. 159 of the Criminal Procedure Code, except for cases in which judgment needs to be urgently made or if arrest warrants issued by different criminal panels are expired.

Art. 14 – The table of case assignment to judges according to the alphabetical criterion, during a judicial year, shall be sent to the registration office by the court's management at the beginning of the year.

Art. 15 – The file shall be sent directly from the registration office to the assigned clerk who will make all necessary notes and keep it until the final decision is rendered.

Section III

Court Session Activity

Art. 16 – (1) The clerk announces the public when judges enter the courtroom.

(2) The parties and the other summoned persons shall be called out by the clerk through the loudspeakers.

Art. 17 – Provided that software and hardware is available, during the court session the clerk inputs into the computer the number of the case, its position on the session list, the statements made during the court session, the measures ordered by the court, as well as all other aspects occurring during the course of the trial.

Section IV
Activity after Hearings

Art. 18 – (1) The number of a decision shall be assigned by a computerized system, after which it shall be sent back to the judge for drafting of the decision.

(2) The notes referring to drafting shall be kept by the chief-clerk in a computerized form of the corresponding register.

CHAPTER III
Final Provisions

Art. 19 – In case there are computerized records, the records on hard copy shall be obtained by printing the computerized records and bound in the corresponding register on a regular basis.

Art. 20 – The provisions of the Regulation on the administrative organization and functioning of first instance courts, tribunals and courts of appeal shall apply accordingly.

APPENDIX D

RESULTS OF TWO LITIGANTS SURVEYS PERFORMED IN 2002

QUESTIONNAIRE 1

(The questionnaire was distributed on March 5, 2002, on the premises of the Third Sector court; 50 litigants and lawyers completed the questionnaire)

This questionnaire aims to obtain the opinion of litigants who have used the services of the Third Sector court and seeks to improve, according to the responses, the standards of the services and the communication between the court personnel and the litigants.

(Your fair answers will help defining the strategy for implementing the changes. We thank you for returning to us the complete form of this questionnaire).

1) What type of service have you requested from the Third Sector court?

Different cases, land registration, studying files, filing of experts' reports

2) Which offices have you dealt with?

- Archive - 42 people
- Registration office - 36 people
- Land registration office - 26 people
- Clerks office - 23 people
- Others (if yes, which are they) – registration judge, benches

3) How often have you dealt with these services during the last 12 months?

very often

4) How do you appreciate the activity of these services (Archives, Registration Office, etc.) in terms of quality, responsiveness and timing?

The respondents were asked to rank from unsatisfactory to very good; there were a variety of responses for each division with no discernable trend.

5) What measures do you think should be taken in order to improve the activity of these services? Please detail.

- setting up an information office in the court
- supplementing the number of judges and clerks
- increase of the salaries of the judiciary
- providing a separate office for lawyers to review files
- shortening the time for resolution of disputes
- setting up an office, in the court, for collecting fees
- providing a larger room for the archive

- strengthening the discipline among clerks who could be more helpful to the public
- computerization of all services
- longer schedule for dealing with the public
- reducing the overload of the judges
- reducing the lines to the land registration office

6) How do you rate the information made available to litigants referring to the process they should follow with regard to filing a case or responding to a court action?

- very good - 14%
- good - 38%
- sufficient - 16%
- insufficient - 22%
- nonexistent - 10%

7) How do you rate the court activity of informing the public with regard to the procedural process they should follow when requesting a document or other court services?

- very good - 16%
- good - 24%
- sufficient - 32%
- insufficient - 16%
- inexistent - 12%

8) How would you rate the usefulness of the information made available to the public?

- very useful - 54%
- useful - 40%
- indifferent - 0%
- useful to a little extent - 4%
- useless - 2%

9) How do you rate the amount of time it takes for judges to issue decisions in cases in this court?

- very long - 22%
- long - 30%
- adequate/appropriate - 46%
- fast - 2%
- very fast - 0%

10) How do you evaluate the professional and interpersonal skills of the clerks from this court?

- very good - 32%
- good - 30%
- adequate - 20%

- satisfactory - 10%
- unsatisfactory - 8%

11) How do you evaluate the professional and interpersonal skills of the judges from this court?

- very good - 40%
- good - 22%
- adequate - 20%
- satisfactory - 8%
- unsatisfactory - 10%

12) How do you evaluate the professionalism, impartiality and correctness (honesty) of the clerks from this court?

- very good - 34%
- good - 22%
- adequate - 20%
- satisfactory - 14%
- unsatisfactory - 10%

13) How do you evaluate the professionalism, impartiality and correctness (honesty) of the judges from this court?

- very good - 30%
- good - 32%
- adequate - 18%
- satisfactory - 16%
- unsatisfactory - 4%

14) What is your opinion on the fees you have to pay when filing your case in the court; are they:

- very high - 26%
- high - 34%
- adequate/appropriate - 32%
- low - 8%
- very low - 0%

15) How convenient is the process of paying the fees, in terms of access to these offices?

- very good - 4%
- good - 12%
- adequate - 24%
- satisfactory - 24%
- unsatisfactory - 36%

QUESTIONNAIRE 2

**(The questionnaire was distributed to 50 litigants, on March 25, 2002,
on the premises of the Third Sector Court)**

This questionnaire aims to obtain the opinion of those litigants who have used the services of the Third Sector Court and seeks to improve, according to the responses, the standards of the services and the communication between the court personnel and the litigants.

(Your fair answers will be help to define the strategy for implementing the changes. We thank you for returning to us the complete form of this questionnaire.)

1) What type of service have you requested from the Third Sector Court?

- submission of documents
- submission of applications on suing at law
- investing with executory clause
- authentication of documents
- examination of files
- divorce

2) Which offices have you dealt with?

- Archive- 44 persons
- Registration office- 36 persons
- Land registration office – 26 persons
- Clerks office – 21 persons
- Others (if yes, which) – registration judge, benches

3) How often have you dealt with these services during the last 12 months?

Numerous times (25, 73, 100, 300, daily)

4) How do you appreciate the activity of the *registration* service in terms of *quality*?

- very good - 62%
- good – 22%
- adequate – 6%
- satisfactory – 10%
- unsatisfactory- 0%

5) How do you appreciate the activity of the *registration* service in terms of *efficiency* (are requested documents issued or information provided in due time)?

- very good – 64%
- good – 14%
- adequate – 10%

- satisfactory – 10%
- unsatisfactory – 2%

6) How do you appreciate the activity of the *archive* service in terms of *quality*?

- very good – 80%
- good – 10%
- adequate – 4%
- satisfactory – 4%
- unsatisfactory – 2%

7) How do you appreciate the activity of the *archive* service in terms of *efficiency* (are requested documents issued or information provided in due time)?

- very good – 76%
- good – 14%
- adequate – 6%
- satisfactory – 2%
- unsatisfactory – 2%

8) What measures do you think should be taken in order to improve the activity of these services? Please detail.

- electronic archive
- computerization of all services
- appropriate office furniture
- adequate salaries
- more politeness and kindness from clerks
- better communication among services
- more supporting staff
- longer working hours for dealing with the public
- setting up a fee payment office on the premises of the court
- setting up an information office at the court's entrance
- panels of judges should hear cases only in the morning
- more land registration offices

9) How do you rate the information made available to litigants referring to the procedural process they should follow with regard to filing a case or responding to a court action?

- very good - 46%
- good – 32%
- sufficient – 16%
- insufficient - 6%
- inexistent – 0%

10) How do you rate the court activity of informing the public with regard to the procedural process they should follow when they address the court (is the procedure in court clear enough so that it can be easily understood by the

litigants)?

- very good – 42%
- good - 24%
- sufficient – 16%
- insufficient – 14%
- inexistent - 4%

11) How would you rate the usefulness of the information made available to the public?

- very useful - 74%
- useful – 26%
- indifferent- 0%
- useful to a little extent – 0%
- useless - 0%

12) How do you appreciate access to legal counsel provided by a lawyer (both in term of fees and of lawyers' availability)?

- very easy – 14%
- easy – 22%
- adequate – 42%
- difficult - 10%
- very difficult – 12%

13) How do you rate the amount of time taken by judges to issue decisions in cases in this court?

- very long – 20%
- long - 20%
- adequate – 58%
- short – 2%
- very short – 0%

14) How do you evaluate the activity of enforcement of court decisions?

- very good – 24%
- good – 20%
- adequate – 32%
- slow – 18%
- very slow – 6%

15) How do you evaluate the professional and interpersonal skills of the *clerks* from this court?

- very good – 56%
- good – 16%
- adequate – 12%
- satisfactory - 10%
- unsatisfactory – 6%

16) How do you evaluate the professional and interpersonal skills of the *judges* from this court?

- very good – 48%
- good – 26%
- adequate – 10%
- satisfactory - 8%
- unsatisfactory – 8%

17) How do you evaluate the professionalism, impartiality and correctness (honesty) of the *clerks* from this court?

- very good – 58%
- good – 18%
- adequate – 10%
- satisfactory - 8%
- unsatisfactory – 6%

18) How do you evaluate the professionalism, impartiality and correctness (honesty) of the *judges* from this court?

- very good – 46%
- good - 26%
- adequate - 14%
- satisfactory - 6%
- unsatisfactory – 8%

19) What is your opinion on the fees you have to pay when filing your case in the court; are they:

- very high – 32%
- high – 20%
- reasonable – 48%
- low – 0%
- very low – 0%

20) How convenient is the process of paying the fees, in terms of access to these offices?

- very good – 14%
- good – 16%
- adequate – 26%
- satisfactory - 24%
- unsatisfactory – 20%

APPENDIX E

RESULTS OF THE PRELIMINARY EVALUATION SURVEY OF THE THIRD SECTOR COURT PERSONNEL

- 22 participants -
May 13, 2003

1. Case-assignment – alphabetical system

In September, the court began a new system for assigning cases to panels by introducing an alphabetical case-assignment scheme keyed to the first letter of the name of the plaintiff (civil cases) and of the defendant (criminal cases). The purpose is to make the case-assignment system transparent and objective.

Efficiency of the new case-assignment system compared to the old:

(less)		(same)		(more)
1	2	3	4	5

- 1 – 2 participants
- 2 – 0 participants
- 3 – 2 participants
- 4 – 12 participants
- 5 - 8 participants

Comments and/or additional suggestions:

- a computerized case assignment is absolutely necessary – 4 participants;
- the system is not perfect and, due to the subjectivity of the registry judge on duty in the Registry Office, it leads to a higher workload for certain panels– 2 participants;
- in civil cases in which the plaintiff is an owner association, case assignment should be done according to the first letter of the respondent's name. This approach would result in a more balanced distribution of cases and it would cover all the letters, consequently all the panels. – 1 participant;
- the subjectivity of the registry judge, who finds him/herself in a conflict of interests situation, leads to quality and quantity imbalances among the assigned cases, and to frictions among judges. Equality among judges and the equal work – equal payment principle are violated through an unequal and deficient distribution of the labor force, which results in lower performances in court. This is a brave and huge step for our society, but the case assignment process needs to be rethought, taking into account these disadvantages. – 2 participants;

Effectiveness of the new case-assignment system in ensuring integrity and transparency:

(not)		(some)		(very)
1	2	3	4	5

- 1 – 0 participants
- 2 – 2 participants
- 3 – 0 participants
- 4 – 8 participants
- 5 – 12 participants

Comments and/or additional suggestions:

- a computerized system that determines an equal and fair case assignment for each panel – 1 participant;
- I do not think there were problems related to integrity or transparency in our court. There is no doubt, avoiding any suspicion is welcome, due to the general atmosphere and the stringent need to build public respect and confidence in the justice system. – 1 participant;
- In the situation when case assignment is not done by computer and several panels have the same letters, misinterpretations and controversies may occur. – 1 participant;

Would a purely random (computer generated) case assignment system be better?

___ yes ___ no ___ don't know.

- Yes – 21 participants
- No – 0 participants
- I don't know – 1 participant

(i) Why or why not?

- because a better balance of the case number and complexity on panels would result – 10 participants;
- it would assure objectivity, transparency and would eliminate critiques and misinterpretations – 2 participants;
- subjectivity of the registry judge would be avoided – 2 participants;
- it would avoid any suspicions of the litigants and any complaints related to the panels' caseload – 3 participants;
- because it would make the work in the Registry Office easier and would eliminate any suspicions related to case assignment – 1 participant;

2. Opening of CEC savings bank office in the court premises

In an effort to make it easier for parties to file their cases, and to pay the fees associated

with such filings, the pilot project has arranged for CEC to maintain a payment window in the court itself.

Does this innovation save time for the registry judge on duty that day and does it spare the court staff of any unnecessary inconveniences? ____ yes ____ no ____ don't know.

- Yes – 11 participants
- No – 3 participants
- I don't know – 5 participants
- 3 participants did not answer the question

How many minutes do you believe this payment window saves each individual who files a case in this court? ____

- about 30 minutes – 5 participants
- 30 to 60 minutes – 1 participant
- about 1 hour – 3 participants
- about 45 minutes – 1 participant
- 30 – 40 minutes and even a day in the event a litigant cannot come back to court on the same day – 1 participant
- at least 15 minutes – 2 participants
- between 30 minutes and 1 day – 1 participant
- I don't know – 6 participants
- 2 participants did not answer the question

Efficiency and convenience achieved through the provision of CEC services on site:

(none)	(some)	(much)		
1	2	3	4	5

- 1 – 0 participants
- 2 – 2 participants
- 3 – 2 participants
- 4 – 8 participants
- 5 – 10 participants

Comments and/or additional suggestions:

- time, money and nerves are saved – 1 participant.

3. Publication of orientation brochures, making them available in the court

Orientation brochures (eight different brochures on eight separate topics) have been published and provided for the public, to educate them about court process.

Do you believe that the brochures are useful to the public?

___ yes ___ no ___ cannot say

- Yes - 15 participants
- Cannot say – 6 participants
- 1 participant did not answer the question

Has there been any impact on the work or the efficiency of the court?

___ yes ___ no ___ cannot say

- Yes - 5 participants
- Cannot say – 15 participants
- 2 participants did not answer the question

Estimated value of informational brochures:

(none)		(some)		(a lot)
1	2	3	4	5

- 1 - 0 participants
- 2 – 2 participants
- 3 – 3 participants
- 4 – 8 participants
- 5 – 3 participants
- 5 participants did not give a score

Comments and/or additional suggestions:

- the language used is too intellectual and difficult to follow – 1 participant;
- it seems to me they are not easy to understand for the public – 1 participant;
- the brochures are not clear enough – 1 participant;
- the brochures should be given to the registry judge, who should distribute them to the litigants asking for legal advice.

4. Magistrate's Day Event

On July 1, the court hosted a public forum, designed to educate the public about court's operations. If you were aware of the event, participated in it, or became aware of its content or impact, please respond below.

Do you believe that the event was worthwhile?

___ yes ___ no ___ cannot say

- Yes – 9 participants
- No – 2 participants

- Cannot say – 11 participants

Should it be repeated?

____ yes ____ no ____ cannot say

- Yes – 8 participants
- No – 2 participants
- Cannot say – 12 participants

Has there been any impact on the work or the efficiency of the court?

____ yes ____ no ____ cannot say

- Yes – 1 participant
- No – 7 participants
- Cannot say – 13 participants
- 1 participant did not answer the question

Estimated value of the Magistrate's Day event:

(none)	(some)	(a lot)
1	2 3	4 5

- 1 – 4 participants
- 2 – 5 participants
- 3 – 4 participants
- 4 – 5 participants
- 5 – 1 participant
- 3 participants did not give any scores

Comments and/or additional suggestions:

- such an event could be very useful to the public provided that it is announced a long time in advance – 1 participant.

5. School children's court orientation

On June 5, 2002, the court hosted a group of school children. The event was designed to educate them about court's operations and the role of the court in society. If you were aware of the event, participated in it, or became aware of its content or impact, please respond below.

Do you believe that the event was worthwhile?

____ yes ____ no ____ cannot say

- Yes – 16 participants

- No – 0 participants
- Cannot say – 4 participants
- 2 participants did not answer the question

Should it be repeated?

____ yes ____ no ____ cannot say

- Yes – 16 participants
- No – 0 participants
- Cannot say – 4 participants
- 2 participants did not answer the question

Has there been any impact on the work or the efficiency of the court?

____ yes ____ no ____ cannot say

- Yes – 2 participants
- No – 6 participants
- Cannot say – 12 participants
- 2 participants did not answer the question

Estimated value of the School Children's Day event:

(none)	(some)	(a lot)
1	2	3

- 1 – 2 participants
- 2 – 5 participants
- 3 – 4 participants
- 4 – 5 participants
- 5 – 1 participant
- 5 participants did not give any scores

Comments and/or additional suggestions:

- such events are necessary for the young people to learn about the justice system and not have prejudices related to it – 1 participant;

6. Posting of the fee schedule

In November 2002, the court posted the fee schedule prominently in the courthouse, so members of the public could see it and ascertain what fees they may be assessed for their court filings.

Do you believe this is helpful to individuals doing business at the court?

(not at all)	(some)	(a lot)
1	2	3
		4
		5

- 1 – 0 participants
- 2 – 0 participants
- 3 – 0 participants
- 4 – 4 participants
- 5 – 17 participants
- 1 participant did not give any scores

Do you believe it saves time for those individuals?

(not at all)	(some)	(a lot)
1	2	3
		4
		5

- 1 – 0 participants
- 2 – 1 participant
- 3 – 0 participants
- 4 – 8 participants
- 5 – 12 participant
- 1 participant did not give any scores

How much time? _____ minutes (per person)

- 30 minutes – 2 participants
- 15 minutes – 2 participants
- 20 minutes – 1 participant
- 5 – 10 minutes – 1 participant
- 10 minutes – 2 participants
- 30 – 40 minutes – 1 participant
- I don't know – 6 participants
- 7 participants did not answer the question.

Do you believe it saves time for court staff?

(not at all)	(some)	(a lot)
1	2	3
		4
		5

- 1 – 0 participants
- 2 – 1 participant
- 3 – 1 participant
- 4 – 7 participants
- 5 – 13 participants

How much time? _____ minutes (per person)

- I don't know – 3 participants

- 3 minutes – 1 participant
- 5 minutes – 1 participant
- 5 - 10 minutes – 6 participants
- 10 - 15 minutes – 2 participants
- 15 – 20 minutes – 1 participant
- 20 – 25 minutes – 1 participant
- 7 participants did not answer the question.

Comments and/or additional suggestions:

- some litigants continue to request information on court fees from the registry judge, and they are dissatisfied when they are sent to consult the posted taxes, since they consider that the registry judge has the obligation to answer their questions;
- the registry judge has the duty to calculate the court fees anyway, but, this way, any litigant can calculate by him/herself and has the possibility to understand why a respective fee is required;
- a notice should be posted to draw the litigants' attention on the fact that the registry judge is prohibited to provide legal advice.

7. Mini-teams / mini-archives

In an effort to keep better track of case files and to ensure accountability for cases and their files, the court has attempted to establish “mini-teams” composed by court clerks and judges who are assigned responsibility for particular cases, for the life of those cases. It was also hoped that the case files themselves could be kept at a location – a mini-archive – convenient to mini-team members, so the files themselves would be easily accessible and less likely to be lost.

Do you believe that this effort to establish mini-teams and mini-archives was worthwhile?

(not at all)		(some)		(a lot)
1	2	3	4	5

- 1 – 0 participants
- 2 – 0 participants
- 3 – 4 participants
- 4 – 6 participants
- 5 – 11 participants
- 1 participant did not give any scores

Was it successful in achieving its purposes?

(not at all)		(some)		(a lot)
1	2	3	4	5

- 1 – 0 participants
- 2 – 3 participants
- 3 – 8 participants
- 4 – 5 participants
- 5 – 3 participants
- 3 participants did not give any scores

If not, why not?

- the results of the court need to be taken into account, through an efficient use of mini - teams, particularly in the cases of panels with a big number of cases – 1 participant;
- mini – archives could not be created due to the lack of office space and office furniture – 3 participants;
- there are not enough court clerks for creating real “mini - teams.” On the other hand, in the judicial systems where such efficient mini-teams exist, the judge is the one who selects and employs the court clerk with whom he/she works, but this cannot happen in the Romanian system. – 1 participant;
- not enough equipment – 1 participant;

8. Computerization

In January 2003, computers were installed in the court and a computerized case registry was begun. Orientation and training on computers took place in the latter part of 2002, and a basic introduction to the new system was provided in early 2003.

Recognizing that learning and implementing the new system takes time and effort, do you see potential for the new computerized system to improve the efficiency of the court’s operations?

(not at all)	(some)	(a lot)
1 2	3 4	5

- 1 – 0 participants
- 2 – 0 participants
- 3 – 0 participants
- 4 – 3 participants
- 5 – 18 participants
- 1 participant did not give any scores

Will the new system improve any of the following, in your opinion:

(not at all)	(some)	(a lot)
1 2	3 4	5

Record keeping

- 1 – 0 participants
- 2 – 0 participants
- 3 – 0 participants
- 4 – 4 participants
- 5 – 17 participants
- 1 participant did not give any scores

Avoiding loss of files/documents

- 1 – 0 participants
- 2 – 0 participants
- 3 – 0 participants
- 4 – 3 participants
- 5 – 11 participants
- 8 participants did not give any scores

Generating statistics and reports

- 1 – 0 participants
- 2 – 0 participants
- 3 – 0 participants
- 4 – 3 participants
- 5 – 18 participants
- 1 participant did not give any scores

Readability of registers

- 1 – 1 participant
- 2 – 0 participants
- 3 – 0 participants
- 4 – 3 participants
- 5 – 14 participants
- 4 participants did not give any scores

Searching registers for information

- 1 – 1 participant
- 2 – 0 participants
- 3 – 0 participants
- 4 – 4 participants
- 5 – 13 participants
- 4 participants did not give any scores

How much time do you believe computerization will save court staff, per case, over the life of the case?

_____ **minutes total per case.**

- 60 minutes /case– 1 participant
- 15 minutes/case – 1 participant
- 45 minutes/case – 1 participant
- hours/case – 3 participants
- 10 minutes/case – 1 participant
- 15 – 30 minutes/case – 1 participant
- I don't know – 5 participants
- 9 participants did not answer the question

How much time will it save the public who comes to the court?

_____ **minutes per case (multiply by the number of people whose time is saved, e.g. if plaintiff and defendant each save 20 minutes of their time over the life of the case, 40 minutes are saved).**

- 30 minutes /case– 2 participants
- 15 – 30 minutes/case – 1 participant
- 45 minutes/case – 1 participant
- 15 – 30 minutes/case – 1 participant
- hours/case – 3 participants
- 5 minutes/case – 1 participant
- I don't know – 4 participants
- 9 participants did not answer the question

Comments and/or additional suggestions:

- The system will be efficient only if there are no double registrations, namely electronic and printed registries. Otherwise, the registration workload will be double. – 1 participant;
- Archives lack space. Consequently, since files are crowded, there is a risk for them to be lost by slipping them under other files. – 1 participant;
- The new system facilitates access of judges to legislation, and has an indirect contribution to the increase of the number of solved cases – 1 participant.

APPENDIX F

RESULTS OF THE FINAL SURVEY OF THE THIRD SECTOR COURT PERSONNEL - 21 participants - November 2003

For the past three years, the Third Sector *Judecatoria* benefited from the implementation of a pilot reform program approved by the Ministry of Justice and supported by the U.S. Agency for International Development (USAID), to promote efficiency and transparency in the courts. The project is winding down, and your thoughts on what worked, what could be improved, and what other ideas should be considered are **most important**. They will help shape the agenda for improvements over the next several months or years, for the benefit of your colleagues in other courts, and justice reforms in Romania.

Thank you in advance for taking the time to give us your opinion. Please return the completed questionnaire to the president of the court on or before November 24, 2003.

1. Seven (7) changes in procedures or reforms took place. In your opinion, what was most useful to improve operations and the image of the judiciary?

Please, rank the changes which were initiated in your court, from the most to the least useful, with 1 being the highest ranking.

1) Random case assignment

- 1 – 15 participants;
- 2 – 3 participants;
- 3 – 1 participant;
- 4 – 2 participants.

2) Opening of a CEC savings bank on the court's premises

- 1 – 10 participants;
- 2 - 6 participants;
- 3 – 3 participants;
- 5 – 2 participants.

3) Orientation brochures for the public

- 1 – 6 participants;

2 – 1 participant;
3 – 4 participants;
4 – 2 participants;
5 – 7 participants;
7 – 1 participant.

4) Magistrate's Day Event

1 – 1 participant;
3 – 2 participants;
4 – 2 participants;
6 – 3 participants;
7 – 12 participants;
8 – 1 participant.

5) Posting of fee schedule

1 – 8 participants;
2 – 3 participants;
3 – 2 participants;
4 – 7 participants;
5 – 1 participant.

6) School Children's Day

1 – 3 participants;
3 – 2 participants;
5 – 4 participants;
6 – 8 participants;
7 – 4 participants.

7) Mini-teams

1 – 7 participants;
2 – 7 participants;

3 – 4 participants;
4 – 1 participant;
6 – 1 participant;
I don't know – 1 participant.

Comments:

- a computerized case assignment system is absolutely necessary – 7 participants;
- the alphabetical random case assignment system has not been a success, due to the fact that the assignment was not fair with respect to the number of cases and their complexity – as a result, the activity of certain panels was more difficult – 1 participant.

2. In view of your experience, if these changes are introduced in other courts, what problems should be anticipated, or what obstacles may have to be overcome?

Comments:

- lack of sufficient supporting staff and court clerks to create mini-teams – 6 participants;
- panels may have an imbalanced assignment of new cases– 2 participants;
- a permanent assistance of the tribunal to which the court is subordinated, logistics, financial resources and sufficient staff – 1 participant;
- a legislative program and internet access – 2 participants;
- insufficient number of supporting staff and lack of computers –1 participant;
- preparation of court decisions by the mini-team clerk – 1 participant;
- ensuring a balance among mini-teams, depending on the alphabetical case assignment system – 3 participants;
- drafting orientation guides for litigants accessible to them, but not by using definitions from specialized textbooks and quotations from procedures codes – 1 participant;
- lack of very clear criteria for the assignment of petitions filed by public institutions, associations and companies – 1 participant;
- the decrease of the number of judges in the first instance courts because of two reasons: their promotion to higher courts, and the first instance courts' obligation to keep that position open while the judge is being temporarily transferred – 1 participant;
- lack of space for performing court activity – 3 participants;
- the alphabetical system should be replaced by a computerized case assignment system, which is better – in the case of the alphabetical system, some mini-teams would get to be “overloaded” and this would increase the workload of certain judges and clerks – 1 participant;
- the subjective factor – the registry judge – is the one who obstructs the accomplishment of an effective random case assignment – 1 participant;
- 6 participants did not answer this question.

3. Some proposed changes did not take place for a variety of reasons. In case they can be introduced in the future, which ones would you place priority on? Please rank them in order of priority from the most to the least useful, with 1 the highest ranking.

1) Transferring intake responsibilities from judge to staff, to free up judicial time

- 1 – 6 participants;
- 2 – 1 participant;
- 3 – 6 participants;
- 4 – 2 participants;
- 5 – 6 participants.

2) Referring cases to mediation or arbitration, to relieve court docket

- 1 – 19 participants;
- 2 – 2 participants.

3) Creating more efficient alternatives to the current summons/service process

- 1 – 5 participants;
- 2 – 10 participants;
- 3 – 5 participants;
- 4 – 1 participant.

4) Creating case cover sheets, to facilitate cataloguing and information retrieval

- 1 – 5 participants;
- 2 – 2 participants;
- 3 – 4 participants;
- 4 – 5 participants;
- 5 – 5 participants.

5) Mini-archives (linked to mini teams)

- 1 – 6 participants;
- 2 – 7 participants;
- 3 – 1 participant;
- 4 – 5 participants;
- 5 – 2 participants.

Comments:

- to improve the efficiency of the court, I think that all these changes need to be made simultaneously, as each of them represents a priority but only collectively they could be really efficient and useful – 2 participants;
- transferring intake responsibilities from a judge to a staff members possible in the case of the land registry service; for other kind of cases, a court clerk needs to have the appropriate legal education – 5 participants;
- drafting a legislative framework for mediation and arbitration, in order to diminish the amount of cases in courts – 2 participants;
- appropriate equipment in courts – 1 participant;
- sufficient space – 1 participant;
- in order for a change to occur, the following steps should be taken without delay: adoption of a new Law on Judicial Organization, and of the Courts' Administrative Management Regulation – 1 participant;

4. What other reforms or operational changes would you like to see introduced in your court as priorities in the next 12 months?

a) to increase efficiency:

- the number of judges and clerks should be increased, as well as the number of courtrooms, in order to allow judges to begin their court hearings at 8:30 a.m. – 3 participants;
- a computerized case assignment program, taking into account also the complexity of cases – 8 participants;
- assignment to ensure a balanced caseload – 1 participant;
- establishment of panels – 1 participant;
- published jurisprudence – 1 participant;
- mini-archives – 1 participant;
- introduction of mediation, in order to diminish the courts workload – 2 participants;
- a stable legislative framework, which would not allow changes to disturb the judicial activity – 2 participants;
- regulation of mediation – 1 participant;
- changes related to the summons procedure – 3 participants;

- the court should require the parties to file all the documents they intend to present in support of their case only until the submittal of their complaint – 1 participant;
- air conditioning, at least in the courtrooms – 1 participant;
- a “lawyer on duty” who should provide litigants with a minimum amount of free information, in order to avoid disagreements with the registry judge – 1 participant;
- computerization of the land registry office – 1 participant;
- sufficient and appropriate space, more courtrooms – 2 participants;
- assignment of a smaller caseload to each judge - 1 participant;
- enforcement of drastic sanctions against persons who do not appear before court (witnesses, parties, experts), including against public authorities – 1 participant;
- specialized panels – 1 participant;
- appropriate legal education for the supporting staff – 2 participants;
- more service of process agents – 1 participant;
- guarantee of tenure for judges and clerks– 1 participant;

b) to increase transparency:

- computerized archives – 2 participants;
- free access to computerized archives – 2 participants;
- there is transparency– 2 participants;
- a website of the court should be created, where docket lists and other useful information could be consulted by litigants – 1 participant;
- information offices in every court – 1 participant;
- access to the court files after disputes are resolved, but also while they are pending in court – 1 participant.

5. The orientation brochures were changed to reflect your comments. Are they easier for the general public to understand? (please circle)

YES – 20 participants

NO – 1 participant

- 1 participant did not answer the question

Comments:

- the language is much more accessible and adjusted to the public’s understanding – 1 participant;
- I consider these orientation guides to be useful under the circumstances, both for improving the delivery of justice and for an effective defense of the parties’ interests; however, it is desirable for parties to appear before the court with a lawyer or to be represented by a lawyer – 1 participant;
- The rules on how to behave in court should be posted on the courtroom’s entrance door – 1 participant.

APPENDIX G

JOB DESCRIPTION FOR IT SPECIALIST

- a. Software & hardware installation and configuration of the computer network (client/server);
- b. Installation and configuration of the operation system on the server and on the computers;
- c. Integration of old computers (network) within the network;
- d. Installation and configuration of programs used on computers;
- e. Configuration of the users, of the divided resources and of the printers;
- f. Configuration of the e-mail server and clients; integration with the mail server of the Ministry of Justice (if necessary);
- g. Configuration of the network access to the internet;
- h. Installation and configuration on the server of the already-existing programs and their use within the network;
- i. Making the connection with the Ministry of Justice's server for the use of specialty programs;
- j. Maintenance in optimum operating conditions of the computer network;
- k. Periodical update of the used programs;
- l. Helpdesk.

APPENDIX H

SEMINAR ON THE RELATIONSHIP BETWEEN THE COURTS AND THE MEDIA

AGENDA OF THE SEMINAR “RELATIONS BETWEEN THE JUDICIARY AND THE MEDIA” FOR SPOKESPERSONS OF THE BUCHAREST COURTS May 16-17, 2002

Thursday, May 16

9:00 – 9:10 - Introductory session. Introduction of speakers.

9:10 – 10:45 - Relationship between the judiciary and the media. The existing relationships between courts and the media in Romania. Why is a judicial system important to the media and why is the media important to the judiciary? Who are the journalists and which are their needs? Presentation and discussions.

10:45 - 11:00 - Coffee break

11:00 – 12:30 - Continuation of discussions. Legislative requirements and constraints. (Romanian Constitution, FOIA, By-Laws on Courts Organization and Functioning, etc.).

12:30 – 13:30 - Lunch break

13:30 – 15:00 - Role of the spokesperson. Creating and conducting a media/communication plan; defining, developing and communicating a message, by avoiding negative press coverage and press releases. Organizers and participants will come up with suggestions for the improvement of the relationships between courts and the media.

15:00 – 17:00 - Audiovisual techniques for spokespersons. Effectiveness of communication. Practical exercises and discussions.

Friday, May 17, 2002

9:00 – 10:45 - Practical applications: interview simulation; draft a press release.

10:45 – 11:00 - Coffee break

11:00 – 12:30 - Public outreach. Creating and conducting public outreach programs, aiming at its understanding of the courts activity and the cooperation between judges and journalists.

12:30 – 13:30 - Lunch break

13:30 – 15:30 - Journalists' rights and responsibilities. The legal and ethical framework for reporting judicial developments, private life issues, etc.

15:30 – 15:45 - Coffee break

15:45 – 17:00 - Roundtable discussion with judges and journalists, based on the conclusions of the two-day training.

APPENDIX I

INFORMATIONAL BROCHURES

1. Legal Assistance and Representation
2. Ways to Appeal According to the Code of Civil Procedure
3. Ways to Appeal According to the Code of Criminal Procedure
4. Filing a Complaint
5. Rules of Conduct for Citizens in Court
6. Legal Vocabulary

attorney, but only for well-grounded reasons and for a limited period of time.

A lawyer has the right to assist the defendant while criminal investigations are underway, to be informed of the status of a case, to submit applications, to raise exceptions, to write opinions and to file an appeal according to the law.

Regardless of the stage of a criminal trial, a selected, or an *ex officio* lawyer, has the duty to provide legal assistance to a party; in case of violation of this duty, law enforcement or the court may inform the bar leadership, so that it will take the appropriate steps.

ORIENTATION GUIDE FOR CITIZENS



LEGAL ASSISTANCE AND REPRESENTATION

These guides were drafted with the approval of the Ministry of Justice, in collaboration with the American Bar Association – CEELI, within a project funded by the United States Agency for International Development (USAID)

A. In civil and commercial cases

In most cases, a natural person or a legal entity who is party in a civil case is not required to appear in court; it can be represented.

By **representatives** one means those persons empowered to perform, during a trial, procedural actions in the name and interest of parties that do not wish or are not able to be present when summoned by judicial authorities.

Who can represent the parties in a civil or commercial case?

A **lawyer** has the right to assist and represent a natural person or a legal entity before all courts. The party and the lawyer will enter into a *legal assistance agreement* providing expressly for the extension of powers the client grants to the lawyer; the lawyer will disclose his/her identity in court and present his/her *power of attorney*.

Lawyer – client relationship

- *The lawyer is the client's confident* – the party presents to the lawyer the facts, the defense, entrusts him/her with papers, etc. All are confidential in nature, and the lawyer must keep the professional secrecy.
- *The lawyer is the client's counsel* – s(he) will give the party his/her opinion on the legal nature and characteristics of the facts, the process to be followed and the chances to win. All this must be presented with objectivity and must have a basis of truth.
- *The lawyer is the client's defender* – according to the specifics of the case, s(he) will prepare the necessary procedural papers, will produce evidence, will raise exceptions, and will assist or represent the party before

the court.

A non-lawyer can represent a party if s(he) has a *certified written power of attorney* or if s(he) has been granted this right by the party in court, during the court hearing. In addition, the complaint must stipulate that the person, who is filing it, is acting as representative.

The power of attorney must expressly refer to the representation before the court.

The representative with a general power of attorney can represent a party before the court only if this is expressly stipulated by the power of attorney. In this case, the power of attorney is deemed to be granted for all stages of the trial. Yet, a special power of attorney is necessary for dispositions during the trial (e.g. withdrawal of action, settlement). The representative who is not a lawyer cannot write briefs except through a lawyer. An exemption exists for law graduates representing their relatives before the court, or an individual representing his/her spouse or a relative to the 4th degree.

B. In criminal cases

The damaged party, the civil party and the party civilly liable can be **represented** at any stage of a criminal trial, and their representative is entitled to formulate requests, questions, to assist the defendant during the criminal investigation process, to offer evidence, to raise exceptions and to appeal court decisions.

As for the **accused party or defendant**, the law provides that s(he) can be represented:

- *During trial* - both in the first instance and in the appeal process.

- *During the pre-trial stage* - only as this relates to certain actions (searches, investigations on the spot, autopsies); for all other actions, s(he) must be present in person or by special proxy (e.g. in case of conciliation);

The lawyer, as the party's defense counsel, can participate in the criminal trial in two ways:

- *Through appointment by the party*, who has the choice of selecting a lawyer who represents his/her interests;
- *Through appointment ex officio by the competent judicial authority*; the law provides for certain cases in which legal assistance is mandatory for the accused party or defendant. In such cases, if s(he) has not appointed a defense lawyer, measures will be taken to appoint one *ex officio*.

Legal assistance is **mandatory** when:

1. the accused party or defendant is:

- a minor;
- military personnel whether enlisted or performing mandatory military service, a reservist on active duty, or a student enrolled in a military education institution;
- confined to a re-education center or to a medical education institute;
- in detention, even for another case.

2. the alleged offense calls for more than 5 years incarceration, or when the court considers that the defendant could not prepare his/her own defense (only during the trial stage).

The lawyer takes the side of the party s(he) is defending, will exercise his/her procedural rights, and can be in contact with the party for an unlimited period of time. Under exceptional circumstances, a detainee can be forbidden to be in contact with his defense

- fiscal code, for legal entities);
- the decision which is appealed;
 - signature of the person who files the notice

It is mandatory for an appeal notice to include reasons for the appeal, because reasons that were not invoked by the dissatisfied party shall not be considered by the appeal court, which will deliver its first instance decision on the sole basis of the reasons invoked in the first instance court. Reasoning can be included in the appeal notice or in a separate memorandum of law.

A final appeal application must include:

- parties' personal data;
- the decision which is appealed;
- legal grounds upon which the final appeal is based and their explanation, or, as the case may be, the specification that legal grounds will be included in a separate memorandum;
- signature of the applicant.

Both **revision notices** and **annulment contestations** need to include legal grounds in support of the appeal.

VI. Stamp fees

Stamp fees for a notice of appeal consists in payment of two separate amounts: a stamp fee and the cost of the judicial stamp.

Appeal and final appeal notices, when the final appeal is an ordinary appeal, shall be stamped with 50% of the amount of the stamp fee owed for the notice filed with the first instance court.

When the final appeal is an extraordinary appeal, the stamp fee owed by the party filing the final appeal notice is 60.000 ROL.

Contestation of an annulment and revision cost a stamp fee of 75.000 ROL.

For any type of appeal, a judicial stamp in an amount of 1.500 ROL will be applied.

These guides were drafted with the approval of the Ministry of Justice, in collaboration with the American Bar Association – CEELI, within a project funded by the United States Agency for International Development (USAID)

ORIENTATION GUIDE FOR CITIZENS



WAYS TO APPEAL ACCORDING TO THE CODE OF CIVIL PROCEDURE

I. What are the appeal procedures according to the Code of Civil Procedure?

According to the provisions of the Romanian Code of Civil Procedure, appeal procedures are divided as follows:

- ordinary procedures, which can be invoked by the party dissatisfied with a court decision without any limitations as to the type of legal grounds cited in the appeal - **appeal and final appeal**.
- extraordinary procedures, which can be enforced only according to the conditions and for limited reasons specifically described by the law:
 - **nullification appeal**
 - **revision**
 - **final appeal in favor of the law**

II. When can the right to appeal be exercised?

The appeal procedure offers the parties, dissatisfied with a decision, the possibility to contest judgments delivered in first instance or decisions issued by higher courts on how the law was applied.

All first instance judgments issued by *judecatorii* and tribunals can be challenged by an **appeal**, unless otherwise required by law.

Court decisions can be challenged through a **final appeal** for cases where the law prohibits a first appeal, and for decisions issued by an appellate trial court.

Final appeals are resolved by the Supreme Court of Justice, unless otherwise provided by law.

The **nullification appeal** is a procedure through which irrevocable court decisions, only, can be challenged for reasons that could not be invoked in an appeal or final appeal trial.

The **revision** is a procedure allowing for adjustment of errors committed in relation to a statement of facts set in a final decision.

Final appeal in the interest of justice can be initiated only by the Attorney General of the Prosecutor's Office attached to the Supreme Court of Justice. The person interested in using such an appeal procedure may submit memoranda to the Attorney General or the Minister of Justice.

If in a notice for appeal, the name of the procedure is listed erroneously, this error will not void the application.

III. Where can one file a notice of appeal?

Appeal and final appeal must be filed with the court whose decision is being contested.

Nullification appeals and revisions must be resolved by the court whose decision is being appealed, and the application must be filed with this court.

IV. What is the term within which a notice can be filed?

The general (regular) term for **appeal** and **final appeal** is 15 days from the time the appealed decision was communicated to the parties.

It is important to remember that, within the same period of time, reasons for appeal or final appeal need to be prepared.

The law also specifies special terms with respect to their duration and the date when they

start running:

- in divorce cases, an appeal shall be filed within 30 days from the date when the decision was rendered;
- in the presidential ordinance procedure, the final appeal term is 5 days and starts running from the date when a decision was issued, if parties were summoned during the trial, and from the date when the decision was communicated, if parties were not summoned;
- in case of declining jurisdiction in favor of another court, the final appeal term is 5 days and starts running from the date when the decision was issued..

A **nullification appeal** may be filed at any time under these conditions: before the last step in the enforcement procedure has taken place; within 15 days of informing the party who has filed the appeal; and, for cases that do not call for enforcement procedures, in less than one year after the judgment decision has been issued.

In general, the term for a **revision** is one month, and starts running at different times, depending on the reason invoked for the revision.

The term for revision is of 3 months in cases where the revision notice requests the European Court of Human Rights (ECHR) to review the violation of fundamental rights and liberties through a court's decision. The 3-month term starts running on the date of publication of the ECHR decision in the Official Journal of Romania.

V. Content and annexes of an application

An **appeal notice** must include:

- personal data of parties (names, address or

For persons whose right to appeal is recognized by law (e.g. witnesses, experts or defendants in a case), the term starts running from the *issuance of the court decision* which ordered the payment of court fees up until a *maximum of 10 days after the delivery of the court decision which resolves the present case*.

In the case of a **final appeal**, the same rules shall apply. The exceptional 3-day term is set also for preliminary decisions on preventive measures.

Annulment contestation can be filed by:

- the party against whom enforcement is ordered, **10 days** at the latest after the enforcement began;
- the other parties, within **30 days** from the date when the contested decision was issued.

A **revision application** against a convict can be filed within a 1-year term from the date when the applicant takes knowledge of facts, circumstances or decisions required by law. A revision application in favor of a convict can be filed at any time

VI. Content of a notice of appeal

A notice of appeal must be prepared in writing, signed by the applicant and contain the following information: personal data of the applicant, number and date of the appealed decision, name of the court which delivered it.

In the case of a final appeal, annulment contestation and revision, the application must including the grounds for the appeal.

Grounds for the final appeal can be submitted when the final appeal application is filed or

through a separate memorandum, filed with the final appeal court, at least 5 days before the first hearing

In criminal cases, all types of appeal are exempted from the payment of court fees.

These guides were drafted with the approval of the Ministry of Justice, in collaboration with the American Bar Association – CEELI, within a project funded by the United States Agency for International Development (USAID)

ORIENTATION GUIDE FOR CITIZENS



WAYS TO APPEAL ACCORDING TO THE CODE OF CRIMINAL PROCEDURE

I. What are the ways to file an appeal?

The Criminal Procedure Code classifies the ways to appeal as follows:

- *Ordinary way*, which can be used by any party and by other participants in a criminal case: **appeal and final appeal**;
- *Extraordinary way*, which may be used only in situations and under terms specified by the law: **nullification contestation, revision, nullification appeal, appeal in the interest of the law**.

II. When can the right to appeal be exercised?

A party dissatisfied with a sentence in a criminal case has the following ways to appeal available:

- all sentences in criminal cases (sentences through which a case is resolved in the first instance) can be challenged through an **appeal**, *except* for:

a) sentences concerning minor infractions issued by *judicatorii*, when the court was properly seized on the basis of a complaint filed by the victim (as specified in Art 279, paragraph 2, point a0 of the Code of Criminal Procedure);

b) sentences issued by military tribunals for offenses listed under Article 279, paragraph 2, point a) of the Code of Criminal Procedure, and for offenses against military order and discipline, sanctioned by law with a prison sentence of 2 years maximum;

c) sentences delivered by courts of appeal and by the Military Court of Appeal;

d) sentences delivered by the Criminal Section of the Supreme Court of Justice;

e) sentences declining jurisdiction in favor of another court.

- the following sentences may be challenged through a **final appeal**:

a) the above-mentioned sentences, which are delivered without a right to appeal, except for those declining jurisdiction;

b) sentences delivered by courts of appeal, except for decisions ordering re-trial of a case;

c) preliminary decisions, in cases specified by law (ex: preliminary decisions on preventive measures, such as arrest), as well as preliminary decisions that suspend further action in a first instance case).

- sentences (decisions) of the final courts of appeal, may be appealed by a **nullification contestation**, on grounds that certain procedural actions should be declared null (for example, failure to comply with the procedure of summoning either party), or when two final decisions were delivered against a person for the same offense.

- final court decisions containing serious *de facto* errors may be appealed by **revision**.

- **nullification appeal and appeal in the interest of the law** may be used only by the Attorney General of the Prosecutors' Office attached to the Supreme Court of Justice. A person interested in having such an appeal filed may submit memoranda to the Attorney General or the Minister of Justice.

III. Who can appeal?

Appeal and final appeal procedures may be used by:

- **prosecutor and defendant**, for the *penal and civil parts of a case*;
- **damaged party**, only for *the penal part*, when a criminal case is initiated based on a *preliminary complaint*.

A nullification complaint may be filed by **either party in a case**.

Revision may be used by:

- **spouse and close relatives** of a convict;
- **parties**;
- **prosecutor**, either *sua sponte* or when s(he) is seized by competent authorities.

IV. Where can an appeal notice be filed?

An **appeal** or **final appeal** notice must be filed with the court whose decision is being appealed.

A nullification contestation must be filed with the court who issued the decision being contested. When a nullification contestation is filed because two final decisions were issued against the same person for the same offense, it must be filed with the court that issued the last final decisions, chronologically.

A notice for **revision** must be filed with the prosecutor of the prosecutors' office attached to the court that reviewed the case in first instance.

V. What are the terms for filing appeals

The general term for filing an **appeal** is 10 days. For *flagrant offenses*, the term is 3 days.

For parties, the term starts running from the date *when a sentence was issued*, if they participated in court hearings or were present when the sentence was delivered. For parties who were not present at court hearings during the trial or when the sentence was delivered, as well as in cases expressly specified by law (e.g. for detainees or those who are serving in the army and who failed to appear in court when the sentence was issued), the term starts running from the date *when a copy of the final disposition was communicated to him/her*.

- a judicial stamp of a value corresponding to the nature of the claim(s).

IV. Where is a complaint filed?

A complaint shall be filed with the court having the jurisdiction to review the case, according to the civil procedure provisions.

A complaint shall be submitted to the registry judge, who will assign the case to the panel of judges who will resolve it, set the date of the first hearing and, also, will order the defendant's summons and transmittal of copies of the complaint and documents; afterwards, the complaint shall be registered by the Registry Department.

A complaint may be filed personally, through a representative, or by mail

These guides were drafted with the approval of the Ministry of Justice, in collaboration with the American Bar Association – CEELI, within a project funded by the United States Agency for International Development (USAID)

ORIENTATION GUIDE FOR CITIZENS



FILING A COMPLAINT

I. What is a complaint?

A complaint is the document initiating a civil case, through which any interested person may request in court the resolution of a lawsuit in which s(he) is directly involved.

II. What must a complaint include?

1. Parties' names, domicile or residence

What does one understand by parties?

In a complaint, parties are called 'plaintiff' and 'defendant'. The plaintiff is the person who claims that one of his/her rights have been violated or disregarded or who can only obtain remedy through the courts; the defendant is the person who is considered to have violated that right.

The plaintiff must indicate with accurately his/her first and last name and domicile, as well as the defendant's first and last name and domicile. If there is more than one plaintiff or defendant, this information should be filled in for each of them.

If the plaintiff indicates that s(he) does not know the defendant's domicile, s(he) must file evidence with the court indicating that s(he) has made all the efforts necessary to locate the defendant's domicile

When defendants are legal entities, they will be identified by their name or firm, nationality, head office and bodies that legally represent them.

Comments:

In case a complaint is filed by the aggrieved party through a representative, or the defendant has representation, one must indicate the first and last name and address of the representative(s). The complaint should be signed by the representative(s). The original power of attorney or its authenticated copy, or the proof certifying the appointment of the representative, should be attached to the complaint

2. Object of complaint and its value

By object of a complaint, one means the plaintiff's concrete claims, for example: claiming an asset, dissolution of marriage, cancellation of a legal document, termination of a contract, request for return of an amount of money. Several claims closely connected can be listed in the same complaint

The value of the object of the complaint is estimated by the plaintiff, when such evaluation is feasible.

3. Explanation of the de facto and de jure grounds on which the complaint is based:

A plaintiff must describe briefly the circumstances that led to the litigation between the parties: this constitutes the *de facto* reasoning of the complaint

It is advisable that the *de facto* reasoning be accompanied by the *de jure* reasoning, by referring to the legal norms the complaint is based upon. If these are not specified, the court will set the cause of action of the complaint.

4. Presentation of evidence upon which each item of the complaint is based

The plaintiff must provide the evidence in support of his/her claim in order to prove the facts invoked. He/she will do the following:

- when introducing proofs through written documents, s(he) will attach to the complaint as many copies as there are defendants, and a copy for the court;
- when producing witnesses, s(he) will specify their names and addresses;
- in the case of cross-examination of the other party, s(he) will request the presence of the other party in court.

5. Signature

A complaint shall be signed by the person filing it, either on his/her behalf or as a representative

III. How to draft a complaint and attach documents attachments

A complaint shall be formulated in writing (preferably typed) in as many copies as there are defendants, with an additional copy for the court.

A complaint must be accompanied by:

- the documents upon which the complaint is based, in the same number of copies;
- the receipt certifying that the court fees were paid as set by law for filing an action;

***ORIENTATION GUIDE FOR
CITIZENS***



***RULES OF CONDUCT FOR
CITIZENS IN COURT***

These guides were drafted with the approval of the Ministry of Justice, in collaboration with the American Bar Association – CEELI, within a project funded by the United States Agency for International Development (USAID)

Rules of conduct for citizens in court

Articles 121-124 of the Civil Procedures Code, and 298-299 of the Criminal Procedure Code regulate general norms of conduct that need to be observed by any person appearing in court

General rules

In court, any person shall:

- be dressed decently and have a respectful behavior;
- possess neither weapons nor any other object that can be used as a weapon;
- respect order and discipline and refrain from any action that could disrupt the court's activity.

Besides these rules, observance of specific rules pertaining to various services of the court is also necessary:

Registry Office

Complaints, as well as any other applications and documents related to cases pending in court are filed with this department.

Any person addressing this department shall:

- respect the posted work hours;
- have a respectful behavior;
- comply with orders issued by the judge responsible for the Registry Office.

The courtroom

In order for the court to operate according to

court procedures, any interested party needs to consult the court hearing list posted on the courtroom's door to find out the schedule/sequence of the case in which (s)he is a party.

Any person appearing in a courtroom must:

- stand up as soon as the panel of judges enters and leaves the courtroom;
- have an ID with him/her;
- keep silent in the courtroom;
- take no pictures nor record hearings (by audio or videotape), unless granted prior approval by the president of the judicial panel, and within the limits set by such approval;
- switch off mobile phones when entering the courtroom;
- neither eat nor drink during hearings;
- abstain from reading newspapers in the courtroom;
- respect the order of cases set by the president of the judicial panel;
- comply with the orders given by the president of the judicial panel to leave the courtroom, if seats are no longer available or when hearings are suspended;
- answer politely to the questions asked by the panel;
- communicate with the other party only through the court, in order to avoid conflicts.

A person speaking to the court must stand and use the formula „Mr. or Ms. President”

Failure to respect discipline and the above-mentioned rules may entail the removal of a person from the courtroom or application of a fine of between 20,000 to 100,000 ROL – in

criminal cases (Article 198, point h of the Criminal Procedure Code) and of between 300,000 to 2,000,000 ROL – in civil cases (Article 108/2 of the Civil Procedure Code).

The Archives Department

Files and court registries can be consulted in this department, according to the posted working hours, based on a written request approved by the head of the Archives Department. In order to obtain access, any individual must prove his/her identity through identification documents.

It is prohibited to leave the Archives Department with a file, or to take documents from the files (under Article 242 of the Penal Code, such an act qualifies as a criminal offense).

Making copies of documents contained in the files is allowed only with the approval of the president or of the judge appointed by him/her, and in the presence of an employee of the Archives Department

Witness – a person who has knowledge of facts or that can help find the truth in a trial.

Ruling order – a procedural document in which the prosecutor or the criminal investigation authority records an order related to criminal law documents or measures.

Presidential ordinance – a special procedure according to which the court orders temporary measures to preserve a right that would be affected by delay, prevent imminent damages which cannot be redressed, and eliminate obstructions to an enforcement action.

Prosecutors' office – law enforcement division of the Public Ministry, composed of prosecutors who carry out the responsibilities of this ministry.

Civil party – a damaged party who files for compensation of damages in a criminal case.

Civily liable party – in a criminal case, a person held responsible for compensating damages caused by the acts of the accused or the defendant (e.g. parents for damages caused by a minor).

Damaged party – a person who suffered physical injuries, moral or financial damages as a result of a criminal offense, and who is a party in a criminal case.

Respondent – a person sued by a plaintiff, on grounds that the former violated or contested a right of the latter.

Recusal – the opportunity given to the parties to request that one or several judges, prosecutors, session clerks or certain experts not take part in the resolution of a case, on grounds that they are relatives of either party in the case or they have personal interests in the resolution of the case, etc.

Extinction of an action – termination of a civil action which, because of the parties, remained unresolved for more than a year (in civil cases) or for 6 months (in commercial cases).

First hearing – the date set by the court when parties, legally summoned, can present their arguments.

Trial – an activity carried out according to the law in which participation of a jurisdictional authority (the court, the prosecutors' office, the investigation bodies of the police), interested parties, and other persons whose contribution is needed (witnesses, experts) is required for the resolution of a dispute between two or several parties (natural persons or legal entities).

Damages – financial or moral harm suffered by a person as a result of commission of an illegal act.

Civil trial – an activity carried out by the court, parties and other persons or authorities participating in a case, for the purpose of establishing the rights or interests subject to review and enforcement of court decisions and other writs of execution, according to the procedures set forth by law.

Criminal trial – an activity having the purpose of resolving a criminal case, so that any person who committed an offense is punished if guilty, and for which no innocent person can be punished.

Registry office – an administrative department of the court, which performs operations related to the receipt and registration of applications and processes the mail addressed to the court.

Court fees – a fee of various amounts paid by a plaintiff when filing a complaint, for services performed by courts.

ORIENTATION GUIDE FOR CITIZENS



LEGAL VOCABULARY

Appeal (as in final appeal, nullification contestation, revision, and nullification appeal) – a legal instrument through which the prosecutor or a party dissatisfied with the court judgement addresses a higher court requesting that it verify the legality of the lower court decision.

Archives – an administrative department on the premises of the courts which keeps files and registries in good condition and provides the parties or persons authorized by them, according to the law, with the data from files which is of interest to them.

Trusteeship – an institution attached to local councils for the purpose of protecting the interests of minors who do not benefit from parental care, in cases specified by law.

Joint property – property acquired during marriage by either spouse and which, on the date it was acquired, becomes joint property of spouses.

Criminal record – a document in which judicial authorities record information related to the criminal record of an individual (criminal sanctions applied to him/her, release on probation, amnesty, pardon, reinstatement of his/her rights, etc.).

Complaint – the document initiating a civil case, through which any interested party may address the court for the purpose of resolving a dispute in which that party is directly involved.

Counterclaim – a document through which a defendant alleges claims against the plaintiff, in response to claims asserted by the plaintiff in his/her complaint.

Plaintiff – a person who addresses the court through a complaint, requesting application of the law to a given case.

Registry certificate – a document issued by the court registry office confirming facts or situations resulting from the records of the court, or related to files in its archives.

Subpoena – a written procedural document through which a person is told to appear before the criminal investigation bodies and/or before court; this procedure is equivalent to an order and requires that the recipient appear in court on the specified date and place.

Declining jurisdiction – transfer of a case by a judicial authority that does not have jurisdiction to resolve the dispute, to another judicial authority that has proper jurisdiction.

Severance (of causes) – separation of one or more cases that had been presented together, for the purpose of a better resolution of the dispute.

Expert report – instrument of evidence, related to the resolution of strictly specialized issues, by persons having knowledge and expertise in a given area.

Defendant – a person accused of having committed an offense, against whom a criminal action was initiated.

Offense – any act or behavior prohibited by the criminal law that may result in punishment such as a jail sentence or a fine.

Reinstatement of rights – an individual measure resulting in annulment of criminal sanctions, for instance return of civic rights and abolition of prohibitions and legal incapacities.

Relapse – the situation when a convicted individual commits, under specific circumstances and within a certain period of time, a new offense that may entail application of a more severe punishment than the one regularly applied for that offense.

Transcript – a procedural document, recording all the facts that took place during a hearing and ordering action(s) for the resolution of a case.

Respondent in appeal – a party in a case, who finds him/herself in the situation of a defendant, when an ordinary or extraordinary appeal is filed.

Objection – a mandatory procedural document filed by a defendant, through which he/she responds to the complaint, for the purpose of defending him/herself against the claims alleged by the plaintiff.

Enforcement order – an order issued on behalf of the President of Romania to bailiffs and law enforcement authorities, to execute a court decision or any other document, in cases specified by law.

Accused – a person against whom a criminal investigation is conducted, and who is suspected of having committed an offense, but against whom a criminal action has not been initiated.

Authentication – a formal action through which a public authority attests to the validity of a document.

Mandatory subpoena – a procedural document ordering the compulsory appearance of a person who refuses to appear before a court or other judiciary bodies after (s)he was summoned.

Magistrate – generic name granted by law to judges and prosecutors.

Public prosecutor's charge – a document prepared by the prosecutor through which the court is notified, and the prosecutor orders initiation of a criminal action against the defendant.

Settlement – an agreement through which parties end litigation in an amicable way.

APPENDIX J

SCHOOL DAY

INVITATION

Third Sector Court of Bucharest
6 Ilfov Street, Sector 5, Bucharest

May 28, 2003

To: Headmaster of the _____ High School, Bucharest

We have the pleasure to announce that the Ministry of Justice, in collaboration with the American bar Association – Central European and Eurasian Law Initiative Program (ABA/CEELI) is conducting a court management reform program, in the Third and Fourth Sector courts of Bucharest.

A key component of the program is the improvement of the courts' public image, and, in order to accomplish this goal, legal education programs for high school students have been suggested, through inviting students to visit a court.

In this context, we kindly ask you to assist the Ministry of Justice and the Third Sector court in organizing this legal education program, by selecting ten students of your high school (10th and 11th grades), to attend this event, which will take place on **June 5, 2003, 10:00 a.m.**, at the Third Sector court, located at 6 Ilfov Street, Sector 5, Bucharest.

The event will consist of a tour of the court, and attending court hearings. Therefore, those students who are interested in the legal field will have the opportunity to acquire basic theoretical and practical knowledge, and to understand the manner in which the state institutions watch over the observance of legal norms.

Please, find attached the detailed agenda of the event.

Please, confirm the participants' names by June 3, 2003, at fax no. 313 28 17, to the attention of President Marius Tudose.

Thank you for collaboration.

Very truly yours,

Judge Marius Tudose
President of the Third Sector Court

**AGENDA OF THE SCHOOL DAY EVENT
- THIRD SECTOR COURT -
JUNE 5, 2003**

10:00 – 10:30 – Attending court hearings in criminal cases (in the courtroom)

10:30 – 11:00 – Attending court hearings in civil cases (in the courtroom)

11:00 – 11:45 – Tour of the court, presentation of the most relevant departments of the court (archive, registry office, court clerks' office, land registry office).

11: 45 – 12:00 – Coffee break

12:00 – 13:00 – Discussions with Judge Marius Tudose, president of the Third Sector court, bench judges and prosecutors regarding procedure aspects and other issues. Follow-up questions posed by students.

Third Sector Court of Bucharest
6, Ilfov Street, Sector 5
June 5, 2003

PRESS RELEASE

The Ministry of Justice, in collaboration with the American bar Association – Central European and Eurasian Law Initiative Program (ABA/CEELI), a program financed by the United States Agency for International Development (USAID), are conducting a court management reform program, within the Third and Fourth Sector courts in Bucharest. A key component of the program is improvement of the courts' public image, and in order to accomplish this goal, legal education programs for high school students have been suggested, through inviting students to visit a court.

In this context, the Ministry of Justice and the Third Sector court of Bucharest, in collaboration with ABA/CEELI, will organize, on **June 5, 2003, 10:00 am**, at the Third Sector court of Bucharest, located at 6 Ilfov Street, Sector 5, Bucharest, a legal education program, attended by thirty high school students (in the 10th and 11th grade) of the “Gheorghe Lazar” and „Tudor Vianu” of Bucharest.

The event will consist of a tour of the court for the group of students, and attending court hearings. Therefore, those students who are interested in the legal field will have the opportunity to acquire basic theoretical and practical knowledge, and to understand the manner in which the State institutions watch over the observance of legal norms.

**RESULTS OF THE SURVEY
ON THE SCHOOL DAY EVENT
ORGANIZED AT THE FOURTH SECTOR COURT
- 6 participants -**

1) Have you previously had the opportunity to visit a court or is it for the first time?

visited a court before –2 participants;
it is the first time when visiting a court –4 participants.

2) Before this visit, what exactly did you know about the judicial system?

had an idea about the manner in which trials take place –1 participant;
knew almost nothing about the Romanian judicial system –5 participants.

Comments:

- one of the participants was not aware of the fact that in Romania there are no jurors;
- another participant knows more about foreign judicial systems than about the Romanian one.

3) What were your expectations at the moment you were informed on this event?

Answers:

- Frankly speaking, I expected this event would be more boring, as I did not expect to find people so open and willing to provide us with so much information – 1 participant;
- I did not have many expectations, because I did not know what it was about. It was a new and interesting experience – 4 participants;
- Being directly interested in this event, I would not have missed it for anything in the world. I wanted to learn new things, which would offer me an exact image of what I intend to do in my life – 1 participant.

4) To what extent were your expectations fulfilled by this visit in court?

Answers:

- We attended civil and criminal cases, we visited the registry office and followed the circulation of files in court, but the discussion in the end with the President and judges of the court was extraordinary, because they clarified for us many aspects of the judicial system – 1 participant;
- I was able to get a picture of the Romanian judicial system and noticed some of its

- particularities – 1 participant;
- It was a very interesting experience. I was able to learn new things about the legal system – 1 participant;
- As I mentioned in my answer to the previous question, today's visit exceeded my expectations by far. It was a very interesting experience and I would like to repeat it as soon as possible – 1 participant;
- 2 participants did not answer the question.

5) Which were the aspects that impressed you most as a result of visiting the court services?

Answers:

- criminal cases – 1 participant;
- the fact that I could attend court sessions – 1 participant;
- the professionalism and dedication of the entire personnel of the court– 4 participants.

6) What aspects impressed you most while attending the court sessions?

Answers:

- I realized the importance of such profession and the many responsibilities a judge has – 2 participants;
- I could not name a particular aspect. I was impressed by the court sessions in general – 1 participant;
- The judges' calm and diplomacy – 1 participant;
- The rigor with which judges perform their duties – 1 participant;
- None of the lawyers were selected by clients. They were court-appointed lawyers.

7) Did this visit help you understand more clearly the manner in which the justice system works? If not, which aspects still remained unclear?

Answers:

- The visit was extremely useful, and because I intend to work within the judicial system, I am convinced that my visit to the court will not stop here – 1 participant;
- The visit was very useful as I did not know very much about the way in which the judiciary operates. However, I am sure that some unclear aspects remained. I could not name them because I do not have sufficient knowledge in the area – 1 participant;
- This visit was a first step – maybe the most important one – in my familiarization with the judicial system – 1 participant;
- Yes, definitely, as I understood much more clearly the way justice operates – 1 participant;

- Yes, very much - 1 participant;
- This visit helped me to understand the way a panel of judges works, what competencies magistrates and employees of the Ministry of Justice have, and which are the main problems faced by the Romanian judicial system – 1 participant.

8) Do you consider that such an activity is useful for your general knowledge?

Answers:

- Yes, and I hope it will be repeated soon, as I am sure there are still aspects on which I do not have a through understanding – 1 participant;
- Yes, I think it was very important because it gave me an idea on the Romanian law in general – 1 participant;
- Yes, very useful – 3 participants;
- Yes, any activity of this kind is useful even for a understanding of some general aspects of justice – 1 participant.

9) Do you think that such activities are necessary and useful to other colleagues of yours?

Answers:

- Yes, it is necessary that a big part of the population participates in such activities, because the way in which justice operates should be known – 1 participant;
- Yes, I think it is more than necessary – 1 participant;
- Yes, I think that other colleagues need such information – 3 participants;
- Definitely, and I hope until graduation you will offer our high school the opportunity of such a program – 1 participant.

10) What other aspects do you think should be addressed in similar activities?

Answers:

- I think in such similar activities we should attend some interrogations conducted in the police stations on those who afterwards appear before court – 1 participant;
- We should also go to a tribunal, to the Supreme Court of Justice, etc. – 2 participants;
- I think all the aspects of justice should be presented and explained in detail, for a better understanding – 2 participants;
- Participation of judges, prosecutors, ex officio and appointed lawyers in such a meeting. Thus, it would be a complete discussion – 1 participant.

APPENDIX K

MAGISTRATE'S DAY

AGENDA JULY 1, 2002

13:00 – 13:20 – Speech delivered by Judge Marius Tudose, the President of the Third Sector court, on the history of the judiciary in Romania.

13:20 – 13:40 – Speech delivered by judge Rodica Aida Popa, the Vice-President of the Bucharest Court of Appeal, on the organization of judiciary, according to Law no.92/1992 on Judicial Organization and the By-laws of the Courts.

13:40 – 14:00 – Speech delivered by Judge Laura Andrei, the President of the Fourth Sector court, on the procedures employed in the courts.

14:00 – 14:30 – Questions & Answers

14:30 – 15:00 – Distribution of materials and reception, sponsored by ABA/CEELI.

The event takes place in the lobby of the Third Sector court.

Third Sector Court of Bucharest
6, Ilfov Street, Sector 5, Bucharest

PRESS RELEASE

On **July 1st, 2002**, on the **Magistrate's Day**, an outreach community program for the public will be organized in the central lobby of the Third Sector court of Bucharest, between 1:00 p.m. and 3:00 pm, for the purpose of familiarizing citizens with judicial matters.

This event, which all the persons interested in the topic are invited to attend, is organized in collaboration with the American Bar Association – the Central and East European Law Initiative Program, which implements reforms in the area of court management.

On this occasion, there will be a dialog between magistrates and citizens related to the general activity of courts. Members of the Bucharest Bar will also attend the event.

APPENDIX L

RECOMMENDATIONS OF THE COUNCIL OF EUROPE IN THE FIELD OF EFFICENCY AND FAIRNESS OF JUSTICE

Recommendation R (86) 12 of the Committee of Ministers to member states concerning measures to prevent and reduce the excessive workload in the courts

- providing for, together with appropriate inducements, conciliation procedures for the settlement of disputes prior to or otherwise outside judicial proceedings;
- entrusting the judge, as one of his principal tasks, with responsibility for seeking a friendly settlement of the dispute in all appropriate matters at the commencement or at any appropriate stage of legal proceedings;
- making it an ethical duty of lawyers or inviting the competent bodies to recognize as such that lawyers should seek conciliation with the other party before resorting to legal proceedings and at any appropriate stage of such proceedings.
- not increasing but gradually reducing the non-judicial tasks entrusted to judges by assigning such tasks to other persons or bodies.
- providing for bodies which, outside the judicial system, shall be at the disposal of the parties to solve disputes on small claims and in some specific areas of law.
- taking steps, by suitable means and in appropriate cases, to make arbitration more easily accessible and more effective as a substitute measure to judicial proceedings.
- generalizing, if not yet so, trial by a single judge at first instance in all appropriate matters.
- reviewing at regular intervals the competence of the various courts as to the amount and nature of the claims, in order to ensure a balanced distribution of the workload.
- evaluating the possible impact of legal insurance on the increasing number of cases brought to court and taking appropriate measures, should it be established that legal insurance encourages the filing of ill-founded claims.

Recommendation R (2001)2 of the Committee of Ministers to member states concerning the design and re-design of court systems and legal information systems in a cost-effective manner

- *cost efficiency*: improved cost efficiency and productivity in court and legal

information systems;

- *speed of justice*: greater celerity in the judicial administrative process and in information retrieval/processing;
- *quality of justice*/[^]quality of service: greater consistency of decisions etc., and in the provision of up-to-date and accessible information and other services to users;
- *transparency of procedures*: increased openness and accountability concerning the status of procedures are being followed and other associated aspects;
- *management information*: more and better information by which to define priorities and guide the organizational management process;
- *deployment of personnel*: more efficient allocation of tasks between personnel (for example, freeing up judges from unwanted administrative functions; and allowing the delegation of tasks to the appropriate administrative levels);
- *staff workload management*: more appropriate distribution and control of workloads between staff, and ensuring the appropriate allocation of staffing resources to particular tasks;
- *simpler and more standardized systems*: more widespread use in different applications standard components, and therefore enhancing compatibility and facilitating easier interchange of staff, etc.;
- *easy to learn and use*: facilitating the process of training and skill development and the transferability of knowledge;
- *security*: greater security of data/organizational systems, and protecting privacy and confidentiality where appropriate;
- *integrity*: high standards of probity, honesty and fairness in the way legal and associated administrative processes operate.

Recommendation R (2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies

- *making legal information available in electronic form* - the State should provide the text of the law both as enacted and as consolidated in electronic form readily available to the public; ideally it should also be possible to retrieve the state of the law for a given date in the past. Simple text access to the law database should be free of charge for the individual.
- *access to public electronic registers in the legal field* - a directory of existing

electronic registers in the legal field should be established in the Internet. Network access to national public registers in the legal field should be made available to appropriate organizations and individuals in accordance with the necessary security and privacy requirements.

- *interaction of court services with the public* - it should be as easy as possible to communicate with the courts and other legal organizations (registries, etc.) by means of new technologies. Electronic information about the court procedures should be available to the public.
- *management* - specific management competence and responsibility should be institutionalized in the bodies working with the information.
- *education and training* - educational programs should be developed with the aim of providing people with the necessary competence to handle the new technologies. These programs should start early in school and should be continued as a process of life-long learning.